

ORIGINAL

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

FILED  
S.D. BANKRUPTCY COURT  
2001 AUG 15 P 4 25  
S.D. OF N.Y.

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In the Matter  
of

H.C. ENTERTAINMENT CORP.,  
Debtor,

-and-

LANSDOWN ENTERTAINMENT CORP.,  
Debtor.

Case Nos.

01-B-13591 ✓

01-B-13592

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August 13, 2001

United States Custom House  
One Bowling Green  
New York, New York 10004

Adj. From: 07/10/01 (2); Hearing of Sale of  
Assets; Adj. From: 07/18/01 (1); Motion by NYS  
Liquor Authority to Lift Stay; Motion by Atty for  
Waterfront NY to Compel Timely Performance of  
Lease Obligations or Reject Lease; Adj. From:  
07/10/01 (2); Hearing of Sale of Assets.

B E F O R E:

HON. ROBERT E. GERBER,

Bankruptcy Judge.

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT

2

3 A P P E A R A N C E S :

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12 BY: ABRAHAM BACKENROTH, ESQ., of Counsel

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1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT

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3 A P P E A R A N C E S (Continued) :

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22 BY: JOHN P. CAMPO, ESQ., of Counsel

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24 BY: JAY G. SAFER, ESQ., of Counsel

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1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT

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3 A P P E A R A N C E S (Continued) :

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6 STEVEN I. HONIG, ESQ.

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25 BY: TRACY HOPE DAVIS, ESQ., of Counsel

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT

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3 A P P E A R A N C E S (Continued) :

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5 DAVID J. KENNEDY, ESQ.

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1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT

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3 A P P E A R A N C E S (Continued) :

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5 THE LAW FIRM OF ROBERT W. DREMLUK

6 Attorney for Lupoli Group

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11 BY: ROBERT W. DREMLUK, ESQ.

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14 ALSO PRESENT:

15 KYLE MERKER, Chair, Community Board Five

16 AMIR BENESH

17 PETER LUPOLI

18 JEFF BRENNER, Director, Kurfew

19 Entertainment

20 HOWARD FUCHS

21 JEFFREY WAYNE LAMB, J. & C. Lamb Management

22 Corp.

23 HELENE BLUM

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1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT

2 P R O C E E D I N G S

3 THE COURT: I want to apologize for  
4 the delays. The court reporter's agency, not the  
5 court reporter, apparently had a misunderstanding  
6 as to the time under which we can begin. They  
7 gave her the wrong instructions, and you all, like  
8 me, were waiting to get underway.

9 With that said, let me get  
10 appearances of those who know they will be  
11 speaking today, and, then, I want to hear from  
12 you, Mr. Backenroth, in the first instance, with  
13 respect to setting forth how you believe the  
14 agenda should proceed, and, then, aspects of the  
15 rules under which we will then proceed,  
16 thereafter.

17

18 First, for the Debtor --

19 MR. BACKENROTH: Abraham Backenroth,  
20 Backenroth, Frankel & Krinsky.

21 THE COURT: Okay.

22 MR. LICHTENBERG: Barry Lichtenberg,  
23 Schwartz, Lichtenberg, for Mansion Realty, the  
24 landlord in the Lansdown Entertainment bankruptcy.

25 THE COURT: Okay, Mr. Lichtenberg.

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2 MR. VICTOR: Saul Victor, Victor &  
3 Bernstein for the contract vendee, co-counsel.

4 MR. ROSENBLOOM: Good morning, Neal  
5 Rosenbloom, Finkel Goldstein Berzow. We are  
6 bankruptcy counsel to Flatiron Entertainment, the  
7 contract vendee in the Lansdown Entertainment  
8 case.

9 THE COURT: Mr. Rosenbloom.

10 MS. DAVIS: Tracy Hope Davis for  
11 Carolyn Schwartz, the U.S. Trustee.

12 THE COURT: Right.

13 MR. CAMPO: Good morning, Your Honor,  
14 John Campo and Jay Safer from LeBoeuf, Lamb,  
15 Greene & MacRae, on behalf of Waterfront New York,  
16 LP for H.C. Entertainment.

17 THE COURT: Right.

18 MR. HONIG: Good morning, Steve  
19 Honig, general counsel for Waterfront New York,  
20 LP.

21 THE COURT: Okay.

22 MR. KENNEDY: Good morning, Your  
23 Honor, David Kennedy, Assistant U.S. Attorney,  
24 U.S. Attorney's Office for the IRS.

25 MR. MANN: Good morning, Your Honor,



1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT

2 Neal Mann, Assistant Attorney General for New York  
3 State Liquor Authority.

4 THE COURT: Okay, anyone else at this  
5 juncture?

6 (No response.)

7 THE COURT: Fair enough.

8 Okay, Mr. Backenroth, we have several  
9 matters on the agenda today.

10 MR. BACKENROTH: Yes, Your Honor I  
11 would like to deal with the sale concerning the  
12 Limelight.

13 Basically, we have scheduled that for  
14 a hearing today. We have several bidders. I  
15 would like to lay out some of the procedures by  
16 which I would like to proceed here.

17 There is a certain unique aspect for  
18 bidding on this type of a situation. It is not  
19 enough that somebody just simply offers more  
20 money. We have to have at least some preliminary  
21 understanding that the type of person that is  
22 making the bid is someone that we believe, at  
23 least comfortably, could pass SLA approval.  
24 So, I have asked for Your Honor to come in.

25 And, also, there has been a bit of

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2 delay, whether or not those people are interested  
3 in bidding, to give us at least on the sheet what  
4 other nightclubs they may have.

5 And I would ask those people a few  
6 questions before they bid to find out whether or  
7 not there are things like violations or any types  
8 of proceedings that may have been pending or fines  
9 against those nightclubs. Because if there were,  
10 that would go into the Debtors' thinking in terms  
11 of the recommendation to the Court as to whether  
12 or not we would accept that bid as the best and  
13 highest offer because a bid for any amount of  
14 money that will not pass the SLA is a useless  
15 enterprise.

16 THE COURT: You're pointing out that  
17 the bid not only has to be highest, it also has to  
18 be best?

19 MR. BACKENROTH: That is correct.

20 So, what I would do, as I would lay  
21 out the terms of the bidding, and I would, before  
22 someone or if someone wishes to make a bid, I  
23 would like to ask them a few questions, in order  
24 to determine that we don't have these type of  
25 problems. And, if we do, then, I would have to

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2 consult with my client as to whether or not they  
3 feel that that is something serious enough that I  
4 would recommend that we not accept that bid, or  
5 that we take our chances with having them as a  
6 bidder that may or may not pass SLA approval.

7 THE COURT: Okay, rather than calling  
8 everybody who has identified themselves so far in  
9 terms of asking whether anybody has any objection,  
10 I am just going to rely upon you all to speak up  
11 if you have any problems with the approach that  
12 Mr. Backenroth stated.

13 I don't hear any objection.

14 MR. LICHTENBERG: There is just one  
15 point, Judge.

16 THE COURT: Yes.

17 MR. LICHTENBERG: Barry Lichtenberg  
18 from Mansion.

19 There seems to be two elements. One  
20 is how much should be bid. And the second is the  
21 manner in which the payments could be paid  
22 pursuant to the bidding.

23 We would respectfully ask the Court  
24 if biddings could start at a price consistent with  
25 the amended Order scheduling a sale of assets and

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT

2 the notice of intended sale.

3 Mansion Realty is owed as of now \$1  
4 million 950 --

5 THE COURT: Say that slower.

6 MR. LICHTENBERG: \$1,959,000.

7 In fact, we have filed a proof of  
8 claim which contains a schedule of the amounts  
9 that are due. The schedule is called "Schedule of  
10 rent and charges due to Mansion Realty, LLC,  
11 Lansdown Entertainment, Corp." I would be glad to  
12 hand up a courtesy copy to the Court at this  
13 time --

14 THE COURT: I would be grateful for  
15 that, Mr. Lichtenberg. Would you provide it to  
16 one of my law clerks, please? And your point, Mr.  
17 Lichtenberg, is that these are cure amounts that  
18 have to be satisfied incident to any assumed and  
19 assigned lease, as part of any sale?

20 MR. LICHTENBERG: Exactly, Your  
21 Honor, and, in fact, notice of the intent of the  
22 sale did say starting price from Flatiron was 1.2  
23 million, but there was an additional amount of  
24 approximately \$1.8 million, as noted in the notice  
25 of intended sale. And, basically, there has been

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2 an additional month that has lapsed. It has gone  
3 up to 1.9 and change.

4 This number, Judge, does not even  
5 include the security deposit of about \$500,000,  
6 which is another issue, and we would hope that  
7 would be paid at or before closing by the  
8 successful bidder.

9 THE COURT: By not counting, you mean  
10 not that you pocketed the security deposit. That  
11 is as a credit against the rent. But what you're  
12 saying is that a new security deposit would have  
13 to be put in its place?

14 MR. LICHTENBERG: We would expect  
15 that. The lease, it does provide for a proper,  
16 viable tenant. We don't know who the successful  
17 bidder is going to be, so in lieu of the process  
18 of interviewing this tenant who is coming in, if  
19 we got the money, we are satisfied that this is,  
20 in fact, a viable tenant.

21 THE COURT: Yes, go ahead, Mr.  
22 Lichtenberg.

23 MR. LICHTENBERG: But, for purposes  
24 of the bidding today, Judge, I would ask that it  
25 start at the \$1.24 million plus the additional 1.9

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2 million which comes out, for a total of 3.3

3 million --

4 THE COURT: Does anybody want to be  
5 heard on the point Mr. Lichtenberg made?

6 MR. BACKENROTH: Yes, Your Honor, let  
7 me clarify the situation. We have gotten an  
8 analysis from the landlord as to the amount of the  
9 default that has to be secured. And although we  
10 have some small amounts that we might differ on,  
11 for the purposes of the hearing, we are prepared  
12 to accept the figure of the \$1,959,000 as the  
13 amount of the defaults that would have to be  
14 cured.

15 In addition, there is a provision in  
16 the lease which provides that upon an assignment  
17 to a new tenant, there has to be a new security  
18 deposit posted.

19 While we could quibble concerning the  
20 question of whether or not that provision could be  
21 enforced, because on assignment of the lease, any  
22 step-ups may not be enforceable, but the landlord  
23 has told us that if the new prospective tenant is  
24 prepared to post the security deposit as required  
25 under the lease, that they will now get into the

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2 question of whether or not the tenant is a viable  
3 tenant, which is another issue that we might have  
4 to get into if this is done on a non-consensual  
5 basis.

6 So, that is what that \$500,000  
7 deposit is all about.

8 But putting that money on the side,  
9 the amounts that would have to be bid in order to  
10 beat the initial bid of Flatiron, which is the  
11 landlord's bid would be 1 million 2, which is the  
12 amount that is already on the table. 1 million  
13 959 plus another \$100,000, which is the approved  
14 overbid that has to be made the next highest bid.

15 So, it would be -- approximately,  
16 \$3,259,000 would have to be the next opening bid  
17 in order -- in order to beat the landlord's bid.  
18 And that is putting aside the issue of the  
19 security deposit. I am not talking about the  
20 security deposit. That issue is on the table.

21 Any prospective purchaser will have  
22 to be aware that there is a security deposit issue  
23 at least. I am not saying that it could not be  
24 done either way, but the landlord has indicated to  
25 us that if the security deposit is put up, they

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2 will not question whether or not the tenant is a  
3 viable tenant for the purposes of the assignment  
4 of the leasehold interests under 365.

5 So, really that is where that all  
6 plays out.

7 THE COURT: What was the sum of the 1  
8 million 959, 1.2 and 100,000 that you were just  
9 making reference to?

10 MR. BACKENROTH: 3,259,000.

11 THE COURT: 3,259,000.

12 MR. BACKENROTH: Yes, that is  
13 3,159,000 plus another \$100,000, which is they  
14 must enter a bid, 100,000 at least higher than the  
15 opening bid and that is the 3,259,000 that would  
16 be the opening bid, aside from the issue of the  
17 security deposit. In other words, the money they  
18 would be paying to us and what we would have to  
19 cure the defaults --

20 THE COURT: Okay, I subscribe to most  
21 of what you and Mr. Lichtenberg said, Mr.  
22 Backenroth. It seems to me that if we are talking  
23 about curing, they have to cure whatever the total  
24 amount ultimately turns out to be.

25 I Heard you saying, Mr. Backenroth,



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2 that you have no material differences with what  
3 Mr. Lichtenberg said. If it turns out that there  
4 was a computational error, which I guess, could go  
5 either up or down, what is necessary to cure, if  
6 Mr. Lichtenberg's client is not the winning  
7 bidder, will be what it turns out to be. We will  
8 assume, for the sake of the discussion, that the  
9 next bid will have to be 3,259,000 and that such  
10 amount might have to be adjusted slightly higher  
11 or lower to meet the exact arrears due to the  
12 landlord as they may later be ascertained.

13 All right, Mr. Backenroth, do you  
14 have any position with respect the order in which  
15 any higher bids are entertained?

16 MR. BACKENROTH: Other than the fact  
17 that I previously indicated, I would like to have  
18 an opportunity to when someone offers a bid, to  
19 ask him a few questions so that I know that there  
20 is no SLA problem involved. Aside from that, I  
21 don't have any particular order, Your Honor.

22 THE COURT: Okay. And, we are  
23 talking about increments of 100,000 as we go  
24 forward?

25 MR. BACKENROTH: That is correct,

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2 Your Honor.

3 THE COURT: Yes, Mr. Victor.

4 MR. VICTOR: Yes, thank you, Your  
5 Honor.

6 THE COURT: Mr. Victor, you and let  
7 me ask everybody, those mikes will come as close  
8 to you as you care to bring them, and you can even  
9 raise them up and, especially, with so many people  
10 in the courtroom, I would be grateful if you would  
11 try to speak into them.

12 MR. VICTOR: Certainly, Your Honor.  
13 I think one other thing should be pointed out,  
14 with respect to bidders and to the Court, and that  
15 is there is a 30-day prefiling requirement with  
16 the Community Board, contained in the Alcohol  
17 Beverage Control Law.

18 And, the contract vendee, to the best  
19 of our knowledge, is the only person who has  
20 prefiled that notice and filed the application  
21 with the State Liquor Authority, both for a  
22 regular license and for the temporary retail  
23 permit.

24 What that means is that any other  
25 bidder would have to pay additional rent for the

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2 at least one month waiting period that it takes  
3 them to file with the Community Board, and, then,  
4 file the application.

5 So, that would be in addition to the  
6 3,259,000 obligation of the purchaser.

7 THE COURT: Okay, you are saying that  
8 it's not a show stopper from the perspective of me  
9 conducting an auction today, but you are saying  
10 that the Community Board's needs and concerns in  
11 that regard have to be satisfied?

12 MR. VICTOR: Yes, and that is the  
13 requirement. It's a 30-day notice. I believe it  
14 is Section 64, perhaps (a) or (c) of the Code.

15 THE COURT: All right, does anybody  
16 want to be heard with respect to what Mr. Victor  
17 just said?

18 MR. BACKENROTH: Well, Your Honor, I  
19 think what it means as a practical matter is that  
20 there may be another \$60,000 that may have to --

21 MR. ROSENBLOOM: \$80,000 to the --

22 MR. LICHTENBERG: Well, come down to  
23 the rent --

24 MR. BACKENROTH: Right, in other  
25 words, \$80,000 is the monthly rent, one of the

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT  
2 things that a prospective bidder may have to come  
3 up with is additional money to cover the rent for  
4 the period of time that he is negotiating.

5 THE COURT: All right, what I draw  
6 from this is, in essence, a first cousin of what  
7 was stated a minute ago. Whatever it takes to  
8 cure the landlord's defaults, is going to be  
9 whatever it takes. And, we are going to use these  
10 numbers as a rule of thumb, okay.

11 All right, the opening bid, if it's  
12 to satisfy the earlier Order of this Court must be  
13 in an amount equal to or greater than \$3,259,000.  
14 Is there anybody in the courtroom who would like  
15 to make a bid at that level?

16 Please come up to the microphone, and  
17 if you could come up to the lectern so everybody  
18 can hear you, that would be great.

19 MR. LAMB: My name is Jeff Lamb. I  
20 am one of the members of the New York Restaurant  
21 and Entertainment, LLC.

22 MR. BENESH: I am Amir Benesh, member  
23 of New York Restaurant & Entertainment, LLC.

24 MR. LAMB: Between us we have about  
25 14 restaurants, and the way we had cast this offer

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT  
2 was to do a million and a half to the creditors,  
3 and to satisfy the original -- what was listed as  
4 the original debt for the landlord, which was 1  
5 million 8.

6 THE COURT: Well, the landlord amount  
7 has now been announced to be 1,959,000, plus  
8 whatever other rent has to be paid to satisfy the  
9 landlord while the Community Board engages in its  
10 review.

11 Can your bid be construed, for the  
12 purpose of this discussion, as being \$300,000  
13 higher than the earlier bid of 1.2, plus paying  
14 whatever it takes to pay the landlord's rent to  
15 cure?

16 MR. LAMB: The original number was --  
17 I am not sure I am following all the arithmetic  
18 that you just mentioned, but we were prepared at a  
19 number of 3 million 3, which is about \$40,000 over  
20 the number that was previously mentioned of  
21 3,259,000.

22 Our offer is predicated on SLA  
23 approval. And we understand now that there may be  
24 this period of time that there may be an  
25 obligation to pay rent.

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2 THE COURT: Mr. Backenroth, do you  
3 want to be heard about that offer, both in terms  
4 of its size and on the condition of the SLA  
5 approval?

6 MR. BACKENROTH: Well, Your Honor, it  
7 is subject to SLA approval. Nothing gets  
8 transferred without SLA approval, so that is a  
9 given.

10 THE COURT: Okay.

11 MR. BACKENROTH: But, the prospective  
12 bidder is going to have to assume the  
13 responsibility or the risks, shall we put it that  
14 way, and that there may be a period of time,  
15 whether a month or two months, where it might be  
16 required to get the SLA approval. And, for that  
17 reason, you will have to, in addition to the bid,  
18 to cover those -- those accruals, as the landlord  
19 is sitting without getting paid.

20 I mean, in essence, that is his --  
21 his bid. It is his bid that is the amount that is  
22 on the table plus if it takes 30 or 60 days, he is  
23 eating that. So, they have to be in a position to  
24 match that.

25 MR. LAMB: Your Honor, we were told

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2 that there is a provision for an interim license  
3 or a temporary license that can be gotten during  
4 this period, preceding a permanent license. And  
5 we would want to know if we would be permitted to  
6 operate, if the landlord would be permitted to use  
7 the facility to operate during that time.

8 MR. BACKENROTH: Right now, at least,  
9 the decision that was made by the Debtor was not  
10 to go for the temporary, but to go for the  
11 permanent license, as a concern that that process  
12 may derail the ultimate transfer of the license  
13 and the successful conclusion of this case.

14 So, at least the business decision  
15 has been made on this side of the table not to go  
16 with the temporary license, even though it may  
17 mean that there may be have a 30-day delay, there  
18 may be a 30-day delay involved.

19 THE COURT: Mr. Victor.

20 MR. BACKENROTH: You should be aware  
21 of that.

22 THE COURT: Mr. Victor, did you also  
23 want to be heard?

24 MR. VICTOR: Yes, I did, thank you.

25 I think there has been a

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT  
2 misunderstanding. Any applicant who wants to file  
3 an application must send a 30-day prior notice to  
4 the Community Board. The contract vendee has done  
5 that. These gentlemen or some other party, the  
6 successful bidder, they would first have to send  
7 that 30-day notice before they could even file  
8 one document with the State Liquor Authority.

9 Then the State Liquor Authority takes  
10 anywhere from 60 to 90 days to investigate on that  
11 application. So, we are really talking about  
12 anywhere from a three to four-month spread, from  
13 the date of the filing of that notice with the  
14 Community Board. That notice could have been  
15 filed by any bidder, and with or without a  
16 contract, with the Community Board. No one has  
17 stepped forward to do that.

18 You are not required to have a  
19 written contract or written agreement in order to  
20 file that notice. That is why we stepped up and  
21 did that. Thank you.

22 THE COURT: All right.

23 MR. VICTOR: I think that weighs in  
24 on, not merely on the highest bid, but best bid.

25 THE COURT: Well --



1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT

2 MR. LICHTENBERG: Your Honor, if I

3 could just make one --

4 THE COURT: Yes, Mr. Lichtenberg.

5 MR. LICHTENBERG: Thank you.

6 There are three additional aspects  
7 that I guess we have touched on. I just want to  
8 get a clarification so that the bidders are aware  
9 of that as well. Number one, as Mr. Backenroth  
10 indicated, is a payment of rent for the interim  
11 payment, however long that may be. And we are  
12 talking in the nature of between 80 and \$100,000  
13 per month.

14 The second is that at closing --  
15 first of all, the notice of intended sale not to  
16 mention 365 does contemplate a prompt closing and  
17 the payment of all arrears.

18 Now, because of the SLA issues  
19 involved here and the getting of the license, it  
20 may take -- it appears unlikely that they will be  
21 able to close by August 20th as provided for in  
22 the notice of the sale.

23 Notwithstanding that, we need a firm  
24 commitment that at closing, the landlord will be  
25 paid in full, as opposed to under some terms.

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2 And, finally, we would need some  
3 agreement from the bidder, this bidder or whoever  
4 the successful bidder is, that at closing, they  
5 will honor the obligation to remit an additional  
6 sum of five-months security in the amount of  
7 approximately \$500,000.

8 THE COURT: Okay, Mr. Backenroth, to  
9 what extent, if any, do you agree or disagree with  
10 what Mr. Lichtenberg just said?

11 MR. BACKENROTH: Well, I agree  
12 certainly with the first part, that if the process  
13 may take 30, 60 or 90 days, to the extent that the  
14 landlord must be secured then, if they are only  
15 bidding a fixed sum, and not taking that into  
16 consideration, then, in essence, the landlord is  
17 bidding more because the landlord is bidding what  
18 is due today, plus he will eat what is due between  
19 now and the 90-day period.

20 So --

21 THE COURT: Albeit that the landlord  
22 may be in a position to close earlier than the  
23 competitors.

24 MR. BACKENROTH: It may very well be.  
25 But, that is something that they did, I guess,

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT  
2 with knowledge of how the SLA works and what you  
3 have to do. And they may have that advantage only  
4 because they filed that piece of paper. But,  
5 whoever bids is going to have to cure the  
6 landlord's obligations and pay money to the  
7 estate. And, if the monies that are paid to the  
8 landlord will increase, and the amount is fixed,  
9 they will, in essence, decrease the amount of the  
10 money being paid to the estate.

11 THE COURT: Okay.

12 MR. BACKENROTH: So they have to  
13 assume that responsibility.

14 THE COURT: All right, but by  
15 bringing this auction before me, you have  
16 explicitly or implicitly brought yourself within  
17 my jurisdiction to rule on what I consider to be  
18 appropriate rules of bidding. They are as  
19 follows:

20 That the opening bid, subject only to  
21 minor adjustments for the exact computations,  
22 does, indeed, require cure of the amounts to the  
23 landlord, which based on all facts now known to  
24 us, are \$1,959,000, but subject to adjustment.

25 The rules also require \$100,000 for

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT  
2 bid increments, and the initial bid was 1.2  
3 million over the amount to cure to the landlord.  
4 Putting it another way, and I think  
5 the better way, is that each bid should be  
6 regarded as the amount necessary to cure to the  
7 landlord at such time as closing takes place, plus  
8 an increment or an amount for the Debtor, and,  
9 ultimately, that means, of course, the Debtors'  
10 creditors. And for those of you who are not  
11 lawyers here, what I am talking about is money  
12 that goes to creditors first before it goes to the  
13 equity of the Debtor.

14 The next bid, originally had the  
15 sound of being 300,000 better for the estate. But  
16 if I am to regard it as such, it has to be 300,000  
17 above the amount necessary to cure defaults to the  
18 landlord.

19 If, as is likely, known from facts  
20 that we are not stating, some or all of that  
21 apparent \$300,000 increment will need to go to the  
22 landlord, then we need to value the amount of the  
23 increment that is left for the estate and  
24 ascertain whether it's \$100,000 better, and/or  
25 give the bidders an opportunity to increase their

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT  
2 bid so that it's, in fact, \$100,000 more or better  
3 for the creditors. That is my ruling in terms of  
4 the ground rules.

5 So, with that said, Mr. Lamb, I would  
6 give you a moment to caucus with your colleague,  
7 if you wish, to see whether you are prepared to  
8 make a bid under those guidelines.

9 MR. LAMB: What I would like to do is  
10 just caucus outside, is that all right?

11 THE COURT: We will take a few  
12 minutes. But, Mr. Victor --

13 MR. VICTOR: I think there is one  
14 other point in the Order for sale or the  
15 conditions. It requires the purchaser to close by  
16 August 20, 2001, within ten days after Bankruptcy  
17 Court approval, time of the essence, subject to  
18 reasonable extensions, but in no event can the  
19 closing be extended beyond August 20, 2001.

20 I suggest to the Court that there is  
21 no possible way for these people to get a license  
22 by August 20th. They have not even filed the  
23 required 30-day notice.

24 THE COURT: Today is August 13th.  
25 Are you saying that you are the only bidder who

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT

2 can satisfy that condition, Mr. Victor?

3 MR. VICTOR: I am, Your Honor,  
4 because no one else, to my knowledge, has filed  
5 the pre-notice to the Community Board.

6 MR. BACKENROTH: Your Honor, then I  
7 would state on the record that since the Debtor  
8 has the right to give reasonable extensions, we  
9 will give reasonable extensions beyond that date  
10 because the essence of the sale is it's a closing  
11 subject to SLA approval.

12 While we do have some dates over  
13 here, the date was so that people understood one  
14 must move very expeditiously because of the  
15 proceedings, but it was not intended that there  
16 should be only one bidder.

17 If these people are going to do what  
18 they have to do, and they are an acceptable  
19 bidder -- we are talking about an all cash  
20 proposal.

21 MR. LAMB: It didn't say all cash.  
22 This is predicated on terms, but this --

23 MR. BACKENROTH: Is your proposal  
24 based on all cash?

25 MR. LAMB: It is not 100 percent

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT

2 cash, no, sir, it is not.

3 MR. BACKENROTH: Well, could you  
4 state --

5 THE COURT: I think you are entitled  
6 to probe as to the exact nature of the terms that  
7 are proposed.

8 MR. BACKENROTH: What, the landlord,  
9 has to be paid in full. Put that aside.

10 Now, what is the amount that you are  
11 bidding for, let us say, for creditors, and how is  
12 it going to be paid?

13 THE COURT: Wait, gentlemen, in my  
14 courtroom, everybody gets a chance to be heard  
15 eventually, but nobody gets a chance to be heard  
16 talking over the other guy. Let Mr. Backenroth  
17 finish his question, and, then, you will get your  
18 chance, Mr. Lamb.

19 MR. BACKENROTH: In other words, the  
20 amounts that you have to cure for the landlord,  
21 that you have to cure the landlord. Let's focus  
22 on what is going to be paid to the creditors.  
23 What is the amount that you are prepared to bid on  
24 that and how is it paid?

25 MR. LAMB: Our original position was

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT  
2 one and a half million dollars to the creditors,  
3 150,000 at closing, \$20,000 for the first month --  
4 for the first 16 months, \$50,000 per month for the  
5 next 20, and 30,000 for the last month.

6 MR. BACKENROTH: Your Honor, the  
7 opening bid of the landlord, I believe, is  
8 \$300,000 to begin with. And I think that I would  
9 not accept those kind of terms. I understood  
10 originally speaking to these gentlemen that they  
11 were talking about an all cash proposal. But if  
12 they are talking about like \$150,000 down, I don't  
13 think that that is what we would be thinking  
14 about.

15 THE COURT: All right, again, Mr.  
16 Lamb, do you want to be heard?

17 MR. LAMB: We can reconsider that  
18 position. I never mentioned our offer was 100  
19 percent all cash. But I can caucus with my  
20 partner, my associate, and we can reconsider that.

21 THE COURT: All right. What we are  
22 going to do here is within limits and reason, we  
23 are going to allow people to do the thinking and  
24 discussion they need to maximize the benefits for  
25 everybody. But let me make the ground rules



1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT  
2 clear. I have already advised you that any bid in  
3 order to be regarded as satisfactory and to be  
4 superior to the one that is already on the table,  
5 must pay any and all amounts legitimately due to  
6 the landlord at closing or -- and I have a little  
7 bit of authority here, a few days, not weeks, not  
8 months, but a few days thereafter.

9 The bid can be no worse in its terms  
10 of payment, and by "terms," I mean timing and  
11 quality of financial assurances, than the 1.2 for  
12 the creditors that is already on the table.

13 Mr. Backenroth, would you please  
14 refresh my recollection as to what the timing  
15 terms are of the proposal now on the table with  
16 respect to their timing and the quality of credit  
17 for payment?

18 MR. BACKENROTH: Yes, \$300,000, the  
19 cash portion of it. Then, there are 48 equal  
20 monthly payments of \$18,750. That is what --

21 THE COURT: On a monthly basis?

22 MR. BACKENROTH: Yes, Your Honor.

23 THE COURT: Any security to the  
24 estate, associated with the payment --

25 MR. BACKENROTH: Yes, there are

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT

2 notes, and the lease is taken back as security for  
3 the transaction, and all the other assets.

4 THE COURT: In other words, the  
5 seller retains kind of like a purchase money  
6 security interest in the remainder to secure the  
7 48 payments at 18 thousand plus --

8 MR. BACKENROTH: That is correct.

9 THE COURT: Okay, Mr. Victor.

10 MR. VICTOR: Your Honor, I would like  
11 to clarify because I don't think Mr. Backenroth is  
12 that familiar with the provisions. I negotiated  
13 them with Stroock, Stroock and Lavan. The balance  
14 of the purchase price is secured by a purchase  
15 money security agreement. The lease is not --  
16 does not stand as collateral for the unpaid  
17 balance of the notes. But I would point out that  
18 the largest single member of the purchasing entity  
19 is the owner, his wife --

20 THE COURT: What is the security  
21 under the purchase money security agreement?

22 MR. VICTOR: A purchase money  
23 security agreement.

24 THE COURT: Yes, I understand. If  
25 you are talking about security agreements, it has

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT

2 collateral, what is the collateral?

3 MR. ROSENBLOOM: Physical assets.

4 MR. VICTOR: All of the trade  
5 fixtures, equipment inventory, the right for the  
6 use of the name. It does not include the lease.

7 THE COURT: All right, Mr. Lamb,  
8 would you like a few minutes to caucus?

9 MR. LAMB: Yes, I would. I do have  
10 one question. Are we the only other bidder, with  
11 the exception of the landlord?

12 THE COURT: We will know as the  
13 morning progresses.

14 MR. LAMB: Okay, thank you.

15 THE COURT: On the one hand, I want  
16 the bidding to have the ability to proceed. On  
17 the other hand, I am not going to sit here while  
18 people caucus. Any of you can call me back into  
19 the courtroom as soon as these people are back or  
20 at such a time as you feel you want to proceed  
21 with going any further. Please let them know  
22 before anybody starts getting up.

23 Mr. Backenroth, please let Mr. Lamb  
24 know what I just said.

25 MR. BACKENROTH: No problem.

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT

2 THE COURT: We are adjourned until  
3 somebody calls me back in.

4 (Recess taken.)

5 THE COURT: Please be seated. Where  
6 are we first?

7 Does Mr. Lamb have anything further  
8 to report?

9 MR. LAMB: Yes.

10 Your Honor, we have had a chance to  
11 talk between my associate and myself, and we  
12 understand the ground rules that you have put  
13 forward here. We can't make an offer exactly to  
14 the words of your ground rules. We want to make  
15 this offer. If it's accepted, great, if it's not  
16 accepted, that is fine. It is in light of  
17 difficulties with the Community Board. We feel  
18 that our concept as a restaurant / entertainment  
19 center is more compatible with the Community  
20 Board. We know there is no mention of that in the  
21 Purchase Order.

22 THE COURT: You are speaking real  
23 fast, say that again, say that again, your  
24 concerns for the community.

25 MR. LAMB: Our offer is based upon

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT  
2 having a restaurant and entertainment center as  
3 opposed to just a straight nightclub. The  
4 Community Board has made -- put forward a lot of  
5 objections to just having a club at that location.  
6 Our offer is based on having something that is in  
7 harmony with the community.

8 Along those lines, I just want to  
9 tell you what our offer is. It is 150,000 --  
10 1,500,000 to the creditors. 150,000 at closing.  
11 \$20,000 per month for the first 16 months.  
12 \$50,000 per month for the next 20 months --

13 THE COURT: Forgive me, Mr. Lamb,  
14 could you say that slower?

15 MR. LAMB: I am sorry, 1,500,000.

16 THE COURT: To the creditors in the  
17 form of --

18 MR. LAMB: In the form of cash.  
19 150,000 at closing.

20 THE COURT: Okay.

21 MR. LAMB: The closing would be at  
22 such time as we are able to get the permanent  
23 authorization from the State Liquor Authority, and  
24 any other agencies having jurisdiction over this  
25 premises.

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT

2 The next payment would be \$20,000 per  
3 month for the first 16 months. Then \$50,000 per  
4 month for the next 20 months. 30,000 the last  
5 month. And that should fully amortize the \$1.5  
6 million.

7 THE COURT: Okay.

8 Mr. Backenroth, do you have any  
9 questions on that proposal?

10 MR. BACKENROTH: Yes, what about the  
11 landlord?

12 MR. LAMB: The landlord, since there  
13 were a number of numbers mentioned with the  
14 landlord, and it seems as if there are  
15 contingencies as to how long the process would  
16 take going through the State Liquor Authority, a  
17 number of 30 to -- I am sorry, a number of three  
18 months to perhaps five months, perhaps six months,  
19 whatever it takes, is what we would offer to the  
20 landlord at closing, whenever that is, pay him  
21 half a million dollars in cash. And, whatever the  
22 total amount due and owing to the landlord is at  
23 that moment in time, we would amortize that  
24 amount, which is estimated to be something over \$2  
25 million, amortize over that. We would amortize

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT

2 that over the next 24 months.

3 MR. BACKENROTH: That is the problem.

4 That is the reason why I asked the question. The

5 landlord, I assume, will insist upon, that his

6 defaults are cured at the closing. And they are

7 offering only to pay a half a million dollars of

8 the approximately million 9 to \$2 million that is

9 owed. And there will be more than that owed.

10 So, I don't know if that is as good a

11 proposal as the landlord's one that he had on the

12 table. In fact, I would recommend the landlord's

13 proposal is better than that.

14 THE COURT: I would love to hear a

15 proposal that has the support of the community and

16 at least not opposed by the community. But the

17 issues that are before me require me to consider

18 rights under Bankruptcy Law. Under the Code, the

19 landlord has a right to prompt cure. Although

20 people can debate what is prompt cure, I don't

21 think anybody can seriously contend that

22 amortizing over 24 months satisfies that

23 requirement unless the landlord is prepared to

24 waive it.

25 Mr. Rosenbloom or Mr. Lichtenberg, do

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT

2 you want to respond to that?

3 MR. LICHTENBERG: On behalf of the  
4 landlord, let me firmly state that we are not  
5 prepared to waive the obligation of the bidder to  
6 prompt a cure in the arrears, which are \$1.9  
7 million. And we are not going to accept a payout  
8 over two years, Your Honor. It is not even close  
9 in our perspective.

10 THE COURT: Okay, subject to  
11 anybody's rights to be heard, I have to rule that  
12 as much as I would love to find something that is  
13 consistent with the Bankruptcy Code and meets the  
14 needs and concerns of the community, I can't  
15 rewrite the Bankruptcy Code, and I can't make the  
16 obligation of prompt cure go away. Unless that  
17 bid is revised, I have to regard it as not capable  
18 of being considered by the Debtor.

19 MR. LAMB: Your Honor, we can't  
20 revise that position right at this particular  
21 juncture, at this moment in time.

22 THE COURT: I understand.

23 MR. BENESH: Regarding the temporary  
24 license, we will consider our numbers based on  
25 Your Honor's decision regarding the temporary



1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT  
2 liquor license. If we are going to assume and  
3 operate immediately according to the law, we can  
4 assume the liquor license and operate it on a  
5 temporary liquor license immediately, our number  
6 can go up and we can revise this offer.

7 THE COURT: Well, I am pleased to  
8 hear that. But if there is any misunderstanding,  
9 let everybody in the courtroom understand what my  
10 rule is. My rule is not to negotiate with any  
11 party. My rule is first and foremost to enforce  
12 the Bankruptcy Code. And within those confines to  
13 insure that I have a fair process going on, and  
14 that I am taking reasonable steps to maximize the  
15 recovery for creditors.

16 If you folks want to talk among  
17 yourselves, if you do it real quietly, I will even  
18 let you keep talking while you stay in the  
19 courtroom, albeit not where you are standing now.  
20 But given that, I am going to ask that the auction  
21 go forward. I -- yes, sir, Mr. Victor?

22 MR. VICTOR: One clarification, I  
23 would like to know whether or not these bidders  
24 have a 10 - percent certified check as the Order  
25 requires or is it available today?

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2 THE COURT: You are entitled to an  
3 answer today.

4 MR. LAMB: We can get a check later  
5 today. We don't have the check with us because of  
6 the way the notice of sale was written.

7 MR. VICTOR: I think it is very  
8 clear. It says a certified check, 10 percent of  
9 all bidders, other than the contract vendee. He  
10 said he can get a check. I still didn't hear a  
11 certified check.

12 MR. LAMB: Certified.

13 MR. BACKENROTH: What would be the  
14 amount of the certified check?

15 MR. LAMB: It would be 10 percent.

16 THE COURT: Of --

17 MR. LAMB: We had originally planned  
18 10 percent of the offer to the creditors. So, we  
19 can get a check for \$150,000 today, certified  
20 funds.

21 MR. BACKENROTH: I understood, Your  
22 Honor --

23 THE COURT: All right, Mr.  
24 Backenroth, would you like to be heard with  
25 respect to how we proceed next?

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT

2 MR. BACKENROTH: I would ask whether  
3 or not there are any other bidders in this  
4 courtroom who wish to make a higher bid and,  
5 maybe, we can just clarify again, we are talking  
6 about satisfying all the landlord obligations and  
7 some may accrue afterwards, plus at least a  
8 million 2, plus the bidding amount, the topping  
9 amount, which is another \$100,000, so if you want  
10 to state it another way, it is 1,300,000, and what  
11 is necessary to cure the landlord. The landlord  
12 is owed 1,950,000 approximately, plus whatever  
13 amount of time there may be in order to close on  
14 this thing, and that runs at approximately \$80,000  
15 a month.

16 Is there anybody else who wishes to  
17 make a bid at this time with regard to the  
18 Limelight?

19 (No response.)

20 THE COURT: The record reflects  
21 silence, Mr. Backenroth.

22 MR. BACKENROTH: I think that I  
23 would, therefore, ask that the Court approve the  
24 Flatiron contract.

25 THE COURT: Does anybody want to be

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT

2 heard further on that issue?

3 (No response.)

4 THE COURT: The record will reflect  
5 silence.

6 The papers reflect, unless they are  
7 controverted in any way, an appropriate exercise  
8 by the Debtor of its business judgment on the  
9 sale. And reasonable, albeit not ultimately  
10 successful efforts to try to maximize value by an  
11 auction here.

12 Does anybody have any further desire  
13 to be heard in any way, shape or form before I  
14 rule on the Debtors' application for approval of  
15 the Flatiron purchase?

16 MR. KENNEDY: David Kennedy from the  
17 U.S. Attorney's office.

18 THE COURT: Yes, Mr. Kennedy.

19 MR. KENNEDY: Two minor clerical A.M.  
20 emendations it is to the Order. I don't know if  
21 Your Honor wants to hear them now.

22 THE COURT: Well, forgive me, Mr.  
23 Kennedy, but let's take it one step at time.  
24 Before we talk about the form of the Order, let's  
25 determine whether I will grant any Order.

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT

2 MR. KENNEDY: Absolutely, Your Honor.

3 THE COURT: Okay, anybody want to be  
4 heard further?

5 (No response.)

6 THE COURT: Okay, no material  
7 disputed issues of fact having been presented to  
8 me, requiring a need for an evidentiary hearing I  
9 find based upon the showings made in the motion,  
10 plus my taking judicial notice of what I have seen  
11 in this courtroom today, that the Debtor has taken  
12 appropriate steps to try to maximize the value,  
13 and has complied with the concerns of the  
14 Bankruptcy Code with respect to the sale.

15 Needless to say, I do not, and I  
16 cannot rule on any concerns by the community and  
17 other people, except to the extent that they raise  
18 matters of Bankruptcy Law.

19 The record will also reflect that the  
20 Debtor tried, but ultimately did not succeed, to  
21 obtain a bid that would be satisfactory to the  
22 community members, who while they don't have the  
23 status as creditors, the Debtor would certainly be  
24 entitled to, as would the Court, consider their  
25 views, if possible.

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT

2 With that said, the motion is granted  
3 in that, and I'll not now hear discussions with  
4 respect to the form of the Order.

5 Mr. Kennedy, I think it is now a fair  
6 time for you to be heard.

7 MR. KENNEDY: Thank you, Your Honor.  
8 I appreciate your continued indulgence in that.

9 The only -- well, there are actually  
10 two emendations now that I look at the Order here.  
11 The more important one is that the liens, claims  
12 and encumbrances should attach to the proceeds of  
13 the sale. And, this phrase was dropped from the  
14 amended Order scheduling a sale of the assets, no  
15 doubt due to an oversight in the same order and  
16 priority as they attached to the underlying  
17 assets.

18 THE COURT: Mr. Backenroth?

19 MR. BACKENROTH: I will add, in fact,  
20 I will circulate the Order to make sure everybody  
21 is satisfied with the language, so that we don't  
22 have an issue concerning that.

23 But, obviously, it is in the order of  
24 priority, which exists in terms of leading claims.

25 THE COURT: Okay, Mr. Kennedy.

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT

2 MR. KENNEDY: Secondly, it has  
3 actually just struck me that the caption says this  
4 is in the Eastern District of New York. We simply  
5 suggest it reflect the Southern District of New  
6 York.

7 THE COURT: I will certainly concur  
8 with that.

9 Mr. Backenroth?

10 MR. BACKENROTH: Yes, we agree with  
11 that.

12 THE COURT: Okay, does that take care  
13 of our business on the Limelight?

14 MR. BACKENROTH: Your Honor, it  
15 depends on if Your Honor wants to hear the  
16 question on the lift stay motion together at the  
17 end, or you want to hear it for each one  
18 separately. It is the same argument.

19 THE COURT: Yes, I would like to  
20 consider the lift stay once, and unless there is  
21 an argument that different factors apply to the  
22 two properties, I will consider that together.

23 If you are okay with that, Mr.  
24 Mann --

25 MR. MANN: I am, Your Honor.

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT

2 THE COURT: All right, I want to turn  
3 to where we stand on The Tunnel next. But if  
4 there is anybody in the courtroom who cares only  
5 about the Limelight and not The Tunnel, you may  
6 leave but you need not leave. It is up to you  
7 folks. If you do leave, I simply ask that you  
8 leave quietly and quickly.

9 All right, Mr. Backenroth, let's give  
10 people a second to depart if they have a mind to.

11 (Off the record.)

12 Okay, Mr. Backenroth, proceed with  
13 The Tunnel, please.

14 MR. BACKENROTH: Yes, Your Honor.

15 THE COURT: And make your  
16 presentation as you see fit, but you can get a  
17 running start if you give me some affirmative  
18 attention to the needs and concerns voiced by Mr.  
19 Campo and his firm.

20 MR. BACKENROTH: I understand, Your  
21 Honor.

22 Your Honor, we had noticed a sale of  
23 The Tunnel as well as it being subject to better  
24 and higher offers. That was based upon the  
25 original proposal of the Wolf Group. They are not



1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT

2 prepared to go forward with the sale. They wanted  
3 some modifications in the lease. The landlord was  
4 not prepared to do that.

5 Instead, however, we do have what we  
6 would call a responsible party, and we are  
7 prepared to bring on an Order to Show cause on  
8 very quick notice to put that party in. They will  
9 put up \$200,000, which is necessary to cover the  
10 defaults under the lease in the Chapter 11.

11 They will also put another --

12 THE COURT: Let me interrupt you, Mr.  
13 Backenroth. You are talking about a prompt cure  
14 of postpetition defaults?

15 MR. BACKENROTH: That is correct,  
16 that is what we are talking about.

17 THE COURT: What about prepetition?

18 MR. BACKENROTH: Prepetition, we  
19 would not assume the lease at this time. We are  
20 not required necessarily to assume the lease at  
21 this time.

22 We will bring them current in the  
23 Chapter 11. And we would use the leasehold  
24 interest, which is an asset of this estate,  
25 whereby we would get an overage of \$40,000 a

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT  
2 month, for the next 20 or 22 months, which is the  
3 term of the lease and generate approximately  
4 \$800,000 for the benefit of the estate and  
5 creditors.

6 I think on the --

7 THE COURT: Which I take it will be  
8 largely the landlord on its prepetition claim,  
9 won't it --

10 MR. BACKENROTH: There are also tax  
11 claims as well involved. There are other  
12 creditors. I don't think that they are the only  
13 creditor. And it would, basically, as far as we  
14 are concerned, the best way at this moment to  
15 maximize the recovery for creditors is the  
16 insurance would be put in place in accordance with  
17 the leasehold interests.

18 They would be -- would stipulate that  
19 they would not, they could not operate unless they  
20 have insurance, which is the 1 million, 3 million,  
21 and the no-exclusion for assault and battery, and  
22 we have a party that is prepared to do that. And  
23 I am prepared to bring on a very short notice,  
24 Order to Show Cause to approve them.

25 THE COURT: So, in essence, what

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT

2 today is, is a status report because you are not  
3 in a position to bring a 363/365 motion before me  
4 today?

5 MR. BACKENROTH: That is correct.

6 THE COURT: All right, because it's  
7 status, rather than asking for anything, because  
8 there is nothing for me to rule upon, but I  
9 certainly want to give you a chance, Mr. Campo, to  
10 be heard.

11 And, no doubt you will mention, at  
12 least in passing, that if your expectation as to  
13 the buyer disappearance turns out to be true, and  
14 that you had been putting us on notice from day  
15 one that the landlord wasn't of a mind to rewrite  
16 its lease and to extend it beyond the present  
17 expiration --

18 MR. CAMPO: That is correct, Your  
19 Honor.

20 THE COURT: Do you want to say  
21 anything further?

22 MR. CAMPO: I have a lot to say.

23 THE COURT: Sure, do you want to come  
24 up to the lectern? We have a crowded courtroom.  
25 We want everybody to be able to hear you.

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2 MS. DAVIS: Your Honor, before Mr.

3 Campo is heard, very briefly, the U.S. Trustee has  
4 concerns about Mr. Backenroth's statement, and the  
5 Debtor wishes to oppose the appointment of a  
6 responsible officer. We would reserve our rights  
7 under Section 1104 of the Bankruptcy Code to  
8 object to the appointment of that type of officer.

9 THE COURT: Sure. I thought that  
10 that was an issue that we were going to have to  
11 deal with. And I guess my thought is simply that  
12 we are not going to deal with it today. And I am  
13 going to give you a better opportunity to  
14 crystallize your thoughts and present them, Ms.  
15 Davis.

16 MS. DAVIS: Thank you, Your Honor.

17 THE COURT: For Mr. Backenroth, do  
18 the same and for Mr. Campo or anybody else who  
19 wants to be heard on the subject, get in papers  
20 and/or be heard otherwise on such a request at  
21 such time as it is made.

22 But that is fine, especially since  
23 there is nothing before me today. Everybody's  
24 rights are reserved in that regard.

25 MS. DAVIS: Thank you, Your Honor.

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2 THE COURT: And I will leave it at  
3 that and give Mr. Campo a chance to be heard now.

4 MR. CAMPO: Thank you, Your Honor.

5 Your Honor, the one thing I really  
6 hate to do, as I stand up at this lectern, is to  
7 say, we told you so, but we told you so. It is  
8 quite obvious, Your Honor, that the Wolf deal was  
9 never a real deal. This Debtor came in here and  
10 continued to hold the landlord up, put a proposal  
11 before this Court that, quite frankly, we think  
12 was done in bad faith.

13 Nobody came to the landlord in the  
14 last 30 days and asked for any amendment to the  
15 lease. Nobody came to talk to us,  
16 notwithstanding --

17 THE COURT: Not even the Wolf  
18 brothers?

19 MR. CAMPO: Nobody came to us. This  
20 Wolf person never came. The Debtor never came.  
21 The Debtors' counsel never came, Your Honor.

22 So, for Mr. Backenroth to suggest  
23 that the Wolf deal didn't go forward because they  
24 requested some amendments to the lease, which the  
25 landlord was unwilling to give, it is, quite

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2 candidly, Your Honor, disingenuous.

3 And, Your Honor, there was no  
4 presentation to the landlord, notwithstanding our  
5 repeated requests for the landlord to come, for  
6 the Debtor and any prospective purchaser to come  
7 forward.

8 Your Honor, we have before us a  
9 landlord that has owed \$2 million, over \$2 million  
10 of both pre and postpetition rent.

11 There was a, quote, proposal that was  
12 put on the table that was approximately -- that  
13 was a \$2 million deal allegedly, although the  
14 Debtor admits that some deposit from the Wolf  
15 transaction had been tendered and used.

16 But notwithstanding that, Your Honor,  
17 we stood back and we allowed this process to move  
18 forward. And we attempted to allow the Debtor to  
19 move forward and successfully assume, assign this  
20 lease, cure our arrears as the landlord is  
21 entitled to under 365, as the Debtor is required  
22 to do.

23 Instead, Your Honor, the Debtor  
24 stands before you today and says, no Wolf deal, no  
25 other deal. And Your Honor, just for the record,

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2 since there was a publicity will I noticed sale, do  
3 we want to ask whether there are any other  
4 prospective purchasers here who are interested in  
5 taking an assumption and assignment of the lease  
6 and possibly purchasing the assets in accordance  
7 with the terms of the deal --

8 THE COURT: I think that is  
9 appropriate, Mr. Campo. Do you want to pause for  
10 a second? Is there anybody in the courtroom who  
11 wants to bid on The Tunnel?

12 MR. DREMLUK: Your Honor, my name is  
13 Robert Dremluk.

14 THE COURT: Would you mind coming up,  
15 please, Mr. Dremluk, and just spell your name so  
16 the reporter can get it? Anyplace you can find a  
17 microphone.

18 MR. DREMLUK: Your Honor, I am  
19 appearing here today on short notice on behalf of  
20 a group of investors and operators who have -- who  
21 continue to operate nightclubs.

22 We were made aware of the situation  
23 late last week. And a number of principles  
24 involved are here today. One flew from California  
25 to be here.

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2 We are interested in taking a serious  
3 look at this situation. But we feel that we are  
4 going to require some time to conduct some due  
5 diligence.

6 We have experience in operating  
7 nightclubs, but we need to understand the  
8 particulars about this particular situation. We  
9 need to understand issues affecting other  
10 interested parties, such as the landlord, such as  
11 the SLA, Taxing Authorities.

12 We need to have some dialogue with  
13 those people to see what their issues are, and to  
14 be able to come into a situation, on a basis where  
15 we are on a good working relationship basis as  
16 opposed to coming in -- into a situation where we  
17 may not be wanted. And that is not what we want  
18 to do here.

19 So we need some additional time to  
20 consider what we want to do. We are not prepared  
21 today to make a proposal. But we are prepared to  
22 take a look. And I think we are a serious  
23 candidate for, either an asset purchase agreement  
24 or a responsible person agreement. Either one of  
25 those would be options that we would consider.



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2 A lot of it depends on the position  
3 that the parties take, Your Honor, in terms of the  
4 landlord's position, concerning its lease, the SLA  
5 concerning licensing issues, taxing authorities  
6 concerning their issues, and we need to explore  
7 those things.

8 THE COURT: What kind of time are you  
9 talking about, Mr. Dremluk?

10 MR. DREMLUK: Given some vacation  
11 schedules, which have been, unfortunately, at the  
12 end of August. We are looking probably at early  
13 September as a framework to complete and we have  
14 to do and be in a position to either make a  
15 proposal or not.

16 THE COURT: All right.

17 MR. DREMLUK: If I may, can I  
18 introduce -- this is Peter Lupoli. Mr. Lupoli  
19 came from California.

20 MR. LUPOLI: Good morning, Your  
21 Honor. My name is Peter, L-u-p-o-l-i.

22 THE COURT: Okay, Mr. Lupoli,  
23 welcome.

24 MR. LUPOLI: I would like to briefly  
25 introduce myself. I represent what we are calling

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2 loosely now the Lupoli Group, which will be  
3 investors / operators thing to take over The  
4 Tunnel.

5 I first became aware of this on  
6 Wednesday of this week past. I flew here on  
7 Saturday, that evening, to attend this hearing.

8 It is our sincere desire to deal in  
9 good faith with all the parties. And counsel for  
10 the Debtor landlord, there may be some truth in  
11 his statements that there have been delays and  
12 representations made, but I must tell you that I  
13 was never a part of those, and I wish to now make  
14 good faith dealings with all the responsible  
15 individuals.

16 Because it is protracted and somewhat  
17 convoluted, I do need time to have my attorneys  
18 and accountants look into this. But we have a  
19 genuine and sincere interest. And I just ask you  
20 to indulge us the time that is necessary to do a  
21 little bit of due diligence. And I am sorry for  
22 the delays that may have occurred before that in  
23 any representations. But we were never a part of  
24 that. And I ask you just to consider us.

25 THE COURT: Okay, what we will do is,

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2 there is in a stricter sense no motion now before  
3 me with the Debtor having withdrawn it, and if  
4 there were one, with you saying although you might  
5 be in a position to make a bid, but you are not in  
6 such a position today anyhow, that underscores  
7 that, I have nothing in the strictest sense before  
8 me today.

9 However, I would like Mr. Campo and  
10 Mr. Backenroth and anybody else who wants to be  
11 heard to state anything they want to just say,  
12 now, in anticipation of matters that may come  
13 before me down the road. Because, you folks came  
14 into the game late, and it is not clear to me  
15 whether you would know about some of the concerns  
16 that Mr. Campo has raised on behalf of his client,  
17 the landlord. Without attempting to characterize  
18 them all, he has talked about a substantial amount  
19 of both pre and postpetition rent that has to be  
20 paid. He has told everybody -- and this was the  
21 underpinnings for his, "I told you so remark" --  
22 that unless he could persuade his client  
23 concerning the contract, his lease expires in two  
24 years or thereabouts, and there is a requirement  
25 of the insurance -- as to which the Debtor has

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2 either actually or arguably not yet been in  
3 compliance -- and the landlord has said he expects  
4 compliance. Those are matters that if you do get  
5 into due diligence or negotiations, you are no  
6 doubt going to want to focus on them.

7 I am grateful for you folks coming  
8 up. Is there anybody else who wants to be heard  
9 with remarks either similar to those or otherwise?

10 Please come up, sir, and identify  
11 yourself when you get to the mike.

12 MR. BRENNER: My name is Jeff Brenner  
13 I currently promote a party called Kurfew at The  
14 Tunnel. I just want to make mention that I also  
15 received late notice about what was going on as  
16 far as the details of the auction. But I have  
17 been working with a couple of investment groups  
18 and made, in fact, several calls last week to Mr.  
19 Campo's client, I think.

20 And I think because of the difficulty  
21 in getting the information from the landlord, we  
22 were unable to proceed as far as potentially,  
23 seriously considering or evaluating the potential  
24 for extending the lease, for example, or for  
25 having any other questions that we had being

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2 answered.

3 So, I just wanted to bring that to  
4 the attention of the Judge, that it was -- there  
5 seemed to be a disinterest on the part of  
6 Waterfront to return calls that were placed to  
7 them on this matter.

8 THE COURT: Mr. Brenner, I think you  
9 preceded your remarks by saying you promote. What  
10 does that mean?

11 MR. BRENNER: We are the ones who  
12 bring the people into the club, do the  
13 advertising, print the fliers, do the website  
14 promotion. We do all the general marketing to get  
15 people interested in coming down, paying the money  
16 to come into the club.

17 THE COURT: You are acting as such  
18 for the existing Debtor?

19 MR. BRENNER: That is correct. We  
20 are an independent company that is working -- that  
21 has been hired by the Debtor.

22 THE COURT: And you said you have a  
23 knowledge of others who might be interested in  
24 possibly bidding on the club.

25 MR. BRENNER: I have been working as

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2 an interested party in, obviously, keeping my  
3 business going. My party, Kurfew, has been there  
4 for four years. We are interested, obviously, in  
5 keeping that going.

6 I have been trying to locate suitable  
7 investors and talking to various investors who  
8 might be interested in taking over the space or  
9 continuing operations in a manner that is,  
10 obviously, in compliance with the landlord's  
11 requirements and the community's requirements to  
12 everything else.

13 THE COURT: Anybody else want to come  
14 on up and speak?

15 (No response.)

16 THE COURT: I think, Mr. Campo,  
17 though, you were interrupted. It was a useful  
18 interruption, and you can continue.

19 MR. CAMPO: Thank you, Your Honor. I  
20 am just going to take a moment just to respond to  
21 the two parties who did come up.

22 We did have a conversation with Mr.  
23 Dremluk outside the courtroom. We advised Mr.  
24 Dremluk, as the landlord has indicated to this  
25 Court, and as the landlord has indicated to this

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2 Debtor on numerous occasions, they are not  
3 interested in extending the time of this lease.  
4 And, quite frankly, we don't believe they are  
5 interested in doing anything with respect to this  
6 lease, with its current term of approximately 21  
7 months remaining.

8 In fact, we were told that that was  
9 probably something that they were not interested  
10 in, based on the fact that there was such a  
11 limited period of time left on the lease.

12 With respect to Mr. Brenner, Your  
13 Honor, my clients advised me that they did not  
14 hear from Mr. Brenner last week or the week  
15 before. But, more importantly, Your Honor, Mr.  
16 Brenner has been a promoter working for the  
17 Debtor. And if they needed information about this  
18 deal, they could have gotten it from the Debtor.

19 The landlord has never turned its  
20 back on giving any information to any prospective  
21 purchaser. And, in fact, it was through another  
22 broker who is here today that the landlord  
23 provided information to Mr. Dremluk's client,  
24 including copies of the lease.

25 So, I think it's a little bit

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2 disingenuous to stand here and suggest that the  
3 landlord has in any way stopped this process from  
4 going forward.

5 But, Your Honor, if I may, I would  
6 like to return to the points that I was making.

7 Your Honor, as I stated, there is  
8 over \$2 million in pre and postpetition arrears  
9 owing and that number is accruing as we stand  
10 here.

11 As Your Honor recalls, at the time  
12 Your Honor set this hearing on July 10th, in lieu  
13 of getting postpetition rent, Your Honor required  
14 that the Debtor pay us postpetition interest on  
15 our accruing postpetition rental obligation. That  
16 obligation is now over \$177,000 and climbing.

17 The underlying principal --

18 MR. CAMPO: The underlying principal,  
19 Your Honor, is \$160,000. There is late charges,  
20 and there is the accruing interest.

21 THE COURT: That is sufficient for my  
22 purposes, Mr. Campo. I just need to know the  
23 order of magnitude. I don't need to know it down  
24 to the last \$5,000.

25 MR. CAMPO: Thank you, Your Honor.



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2 Your Honor, as I stated before, this  
3 landlord has been in a constant battle with the  
4 Debtor to try to get rent in the prepetition  
5 stages --

6 THE COURT: Just a minute, Mr. Campo.  
7 We waived our rules on cell phones. Every person  
8 who has a cell phone on now is to turn it off and  
9 we are not going to move until that is done.  
10 Whose cell phone was that?

11 MR. LAMB: It was my phone. I am  
12 leaving. I am sorry.

13 THE COURT: Will you please leave the  
14 courtroom until you are assured that it's off?

15 MR. LAMB: It is off, it is off.

16 THE COURT: Forgive me, Mr. Campo.

17 MR. CAMPO: It is quite all right.

18 Your Honor, the postpetition rent is  
19 accruing. The prepetition rent hasn't been paid.  
20 And now, at the eleventh hour, the Debtor stands  
21 up and says they want to bring on a motion for a  
22 responsible officer, and, in effect, operate under  
23 the lease with a responsible officer and  
24 circumvent 365, and, indeed, circumvent the  
25 requirements in order to assume and assign a

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2 lease, which is exactly what the Debtor, I assume,  
3 would probably be attempting to do, although I  
4 have not seen anything concrete with respect to  
5 it. We have only heard what Mr. Backenroth has  
6 stated, he is, in effect, attempting to do.

7 Notwithstanding the requirements of  
8 365(b)(1), notwithstanding the requirements of  
9 365(b)(3), and notwithstanding the requirements of  
10 365(f)(2), this Debtor would stand before this  
11 Court and now say, all right, the gig is up.  
12 There is no Wolf. There is no deal. But let me  
13 bring somebody in here who will put some money  
14 into this estate while we do what, while we run  
15 out the term of the lease and not cure the arrears  
16 to the landlord.

17 Your Honor gave the Debtor a very  
18 specific and limited period of time to move  
19 forward with the sale of these assets.

20 We have before you, Your Honor, in  
21 addition to our objection to the proposed sale of  
22 the assets, which, Your Honor, I don't even need  
23 to go into the details any longer since Mr. Wolf  
24 is not real, and we also have a motion, Your  
25 Honor, to compel either the timely performance of

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2 the lease obligations or the rejection of the  
3 lease and the surrender of the premises, pursuant  
4 to Sections 105(a) and 365(d)(3).

5 Your Honor, we implore you to allow  
6 us to move forward. We ask this Court to keep  
7 this lease rejected. This Court has been used by  
8 this Debtor, possibly not by the lawyers  
9 intentionally, but the process here has been one  
10 in which the landlord has been injured, the  
11 creditors have been injured.

12 We have accruing postpetition rent,  
13 no payment on prepetition rent. And, yet, this  
14 Debtor which came before this Court and told the  
15 Court that this was a, quote, wasting asset, which  
16 they had to promptly sell -- and I can read from  
17 the transcript of the July 10th hearing. There  
18 were several occasions, including Mr. Backenroth's  
19 own statements to the Court that we are, quote,  
20 "Not here to hold up the landlord if there is no  
21 sale. If there is no sale on the return date, we  
22 intend to give the landlord back the premises."

23 And we, Your Honor, request that this  
24 Court enter an Order deeming this lease rejected  
25 because this Debtor cannot perform. And it is

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2 clear that this Debtor cannot assume and assign  
3 this lease. There are no prospective purchasers  
4 here who are going to move forward with respect to  
5 any deal, Your Honor. And we would request that  
6 Your Honor award -- enter an Order rejecting the  
7 lease under 365 and direct the surrender of the  
8 premises to this landlord before any further  
9 administrative expenses are accrued, and before  
10 this landlord is injured any more.

11 This is a postpetition,  
12 administrative creditor who is here because we  
13 gave the Debtor an opportunity to move forward and  
14 sell. Now, we are here on the return date. There  
15 is no sale, Your Honor. It is absolutely untoward  
16 to consider, consider any extension of this sale,  
17 or any extension of the process that has moved  
18 forward thus far and to not award this landlord  
19 back the premises.

20 THE COURT: Okay, Mr. Backenroth, I  
21 will hear from you, and, in particular, I know or  
22 at least expect that you are going to address the  
23 points Mr. Campo made, stating in substance that  
24 his client was sandbagged with a prospective  
25 purchaser who was never there and who failed to

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2 communicate with the landlord. Come on up,  
3 please.

4 MR. BACKENROTH: Your Honor, we were  
5 assured that the Wolf deal was a real deal.  
6 Otherwise, we would not have put it before the  
7 Court. They had \$100,000 --

8 THE COURT: When you say "we," who  
9 are you talking about?

10 MR. BACKENROTH: I am talking about  
11 the client had assured us that the Wolf people  
12 were real, and we were in discussions with their  
13 counsel.

14 THE COURT: Did you also communicate  
15 with the counsel?

16 MR. BACKENROTH: Mr. Frankel was  
17 doing most of the negotiations on those issues.  
18 In fact, Mr. Frankel had called the landlord, and  
19 certainly in the last couple of days, to find out  
20 whether the landlord would consider modifications  
21 of the lease. And they said, "No," that they were  
22 prepared to offer substantially more rent than  
23 what was involved in the lease.

24 And the landlord said, "We are not  
25 prepared to consider any modifications of the

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2 lease."

3 It is their right not to consider  
4 modification of the lease. But, it is our  
5 responsibility to try and maximize the recovery  
6 for creditors, and, therefore, assume a backup  
7 position. And the backup position is cure their  
8 postpetition obligations as we are required to do,  
9 put in the insurance as we are required to do,  
10 and, therefore, maximize the return on this asset.

11 Now, on the Kleinsleep, which is the  
12 Second Circuit decision, we are not required to  
13 immediately assume or reject the lease. That can  
14 wait until some future time --

15 THE COURT: If you win over Mr.  
16 Campo's anticipated objection, on a 365(d)(4)  
17 motion.

18 MR. BACKENROTH: Your Honor, the  
19 question is whether or not Your Honor will extend  
20 the time to assume or reject the lease on our  
21 part.

22 If we pay postpetition obligations,  
23 and we will pay all postpetition obligations as  
24 part of the proposal, then the question is whether  
25 or not Your Honor is going to force us to assume

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2 or reject the lease immediately, in which case,  
3 since we are not in a position to pay prepetition  
4 defaults, that would be the end of the game. Or,  
5 whether Your Honor would allow us to continue to  
6 use this asset, so long as we are paying the  
7 administrative obligations associated with the  
8 lease.

9 And, the question is are we required  
10 to do any more than that. We tried to do more  
11 than that. We really did. We tried to find a  
12 buyer. We tried to find someone to do all of this  
13 stuff, but, unfortunately, we were not successful  
14 in doing it.

15 What we have, well, what we were  
16 prepared to put before the Court was a very short  
17 notice, I am talking about an Order to Show Cause  
18 returnable this week, in which we would get a  
19 party in there who would put up the \$200,000  
20 necessary to cure all postpetition rents, put  
21 insurance in place that is necessary to satisfy  
22 the landlord's obligation.

23 And, then, the question is, whether  
24 or not, in the face of that and in the face of the  
25 fact that rent would be paid going forward, and

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2 that would be the condition if they stopped paying  
3 rent, of course the lease would terminate, and the  
4 estate getting a \$40,000 a month overage, over the  
5 amount, whether or not Your Honor, in the face of  
6 that, would say that, "No, the landlord should be  
7 handed back the keys, and that should be the end  
8 of it". And that would be Your Honor's call  
9 basically, on that issue.

10 As I said, I would have liked to have  
11 had a buyer. We are talking about far more  
12 substantial money. We don't agree with the amount  
13 of money the landlord claims he is owed. We have  
14 counterclaims against the landlord.

15 THE COURT: Let me interrupt you, Mr.  
16 Backenroth. Let me have a sense as to the lowest  
17 common denominator on which you and the landlord  
18 would not quarrel. Or putting it another way,  
19 assuming for the sake of discussion that you don't  
20 agree with everything Mr. Campo's client is asking  
21 for, how much, in your view, is owing to the  
22 landlord on a prepetition basis?

23 MR. BACKENROTH: Can I have a moment,  
24 Your Honor?

25 THE COURT: Sure.



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2 MR. BACKENROTH: Putting aside the  
3 counterclaims for tortious interference,  
4 approximately a million dollars. That is after  
5 consultation with Mr. Klinger, who is more  
6 involved with the litigations and State Court and  
7 the activities that proceeded to Chapter 11.

8 THE COURT: Okay, go ahead.

9 MR. BACKENROTH: Basically, the  
10 question is whether or not the Debtor cannot sell  
11 this asset, at least at this moment, and will be  
12 allowed to use the asset so long as he has paid  
13 for it, postpetition for all obligations that are  
14 due the landlord.

15 They are not necessarily required to  
16 get prepetition payments, only if I assume the  
17 lease. But, if I could use this lease and pay  
18 them currently and generate assets for the estate,  
19 why is it that the Debtor should not be allowed to  
20 do that? That is really the question.

21 We have had discussions with the  
22 representative from the Attorney General's Office  
23 as to whether or not this kind of approach would  
24 work. We believe that it would work. Otherwise,  
25 we would not be proposing it. And I am prepared

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2 to bring on this motion on very short order,

3 return date at the end of this week.

4 Your Honor can decide whether he

5 wants to allow the Debtor to do this or the Debtor

6 has to hand back the keys. And it is not a

7 question of holding up the landlord. The landlord

8 it is entitled to postpetition rent. And we are

9 proposing giving him that. He is entitled to

10 insurance coverage. We are proposing getting into

11 that.

12 Whether or not if he is entitled

13 under the Second Circuit under Kleinsleep or some

14 other decision for immediate assumption or

15 rejection of the lease is quite another thing.

16 As I said, I would like to have that

17 and have this thing finished, but, unfortunately,

18 that is not what is on the table. What is on the

19 table is an alternative that will net the estate

20 approximately \$800,000, while paying the landlord

21 the postpetition rent obligations that he is

22 entitled to.

23 The landlord had many options, if he

24 wanted to, to negotiate modifications of the

25 lease. I am not saying I have to do that. But he

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2 had many opportunities to do that. That wasn't  
3 his will to do that. And I can't force him to do  
4 that. But that doesn't mean that I should simply  
5 throw away an asset of the estate, because the  
6 landlord says, "This is what I want, this is what  
7 I want, this is what I want."

8 Now, the question is, whether or not  
9 the Debtor has the right to use this lease  
10 postpetition to pay the postpetition obligations,  
11 and generate money for creditors. And maybe, the  
12 answer to that is no. I don't know, I don't think  
13 the answer to that is no. I think the answer to  
14 that is yes. But I am prepared to bring that on  
15 short order. Your Honor can rule on it, whether  
16 Your Honor believes that that is appropriate or  
17 not, and, really, that is the end of it.

18 THE COURT: Okay, I think the Second  
19 Circuit guidance that governs whether I should be  
20 proceeding in the fashion you are talking about,  
21 and in particular how I should construe 365(d)(4)  
22 extensions or motions to pull the plug, it  
23 probably comes more from Burger Boys, and  
24 Kleinsleep tells me the consequences to an estate  
25 of an assumption when you don't have the

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2 wherewithal to pay for it.

3 MR. BACKENROTH: That is correct.

4 THE COURT: But with that said, okay,  
5 Mr. Backenroth, is there anybody in the courtroom,  
6 other than Mr. Campo who represents a creditor of  
7 the estate, or is a creditor of the estate in  
8 contrast to being either a bidder for assets or a  
9 holder of equity.

10 MR. FUCHS: I work for Mr. Jeffrey  
11 Wolf.

12 THE COURT: Come up please and come  
13 closer to the mike. Tell me your name, please.

14 MR. FUCHS: My name is Howard Fuchs.  
15 I have been representing Mr. Jeffrey Wolf in his  
16 negotiations for the purchase of The Tunnel. Mr.  
17 Wolf is certainly a real entity and well capable  
18 of buying The Tunnel. The problem is that he was  
19 facing internal problems that he had no control  
20 over.

21 He did have a management group in  
22 place, Hospitality Consultant Group of New Jersey.  
23 However, due to various pressures and  
24 conversations they had, they decided not to manage  
25 the club.

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2 At the current time, Mr. Wolf was  
3 speaking with the current group, Lupoli, who flew  
4 in from San Francisco. And it was his hope to  
5 hire them or to work out a deal with them, where  
6 they would manage the nightclub.

7 Mr. Wolf is ready to move forward.  
8 His attorney was not available today, Joseph  
9 Altman. He is on trial. He would like to be  
10 here. I can only tell you that Mr. Wolf exists  
11 and is ready.

12 THE COURT: All right.

13 MR. FUCHS: Not on the purchase  
14 agreement.

15 THE COURT: Not the purchase.

16 MR. FUCHS: I think he has gone along  
17 with this new agreement.

18 THE COURT: Here's what we are going  
19 to do. What is before me today is, in substance,  
20 nothing. The Debtor, not being in the position to  
21 move forward on The Tunnel purchase today, that  
22 aspect of its motion has to be regarded as either  
23 being withdrawn as moot or withdrawn for some  
24 other reason.

25 The Debtor has indicated that he

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2 wants to bring on, or counsel for the Debtor has  
3 indicated that he wants to bring on a motion for,  
4 as he puts it, putting a responsible officer in  
5 place, or under some other rubric, a manager who  
6 will continue to operate The Tunnel under what  
7 sounds like it would be a continued ownership of  
8 record by the Debtor.

9 That does not necessarily entail or  
10 unless I go below the surface, it doesn't entail  
11 at all an assumption of the lease, excuse me, an  
12 assignment of the lease, but it may, and certainly  
13 Mr. Campo is entitled to be heard on it, involve  
14 an assumption of the lease, or a determination by  
15 me under 365(d)(4) of the Code that the Debtors'  
16 time to assume or reject should be continued.  
17 This is bankruptcy 101.

18 Mr. Campo has stated in words or in  
19 substance that he opposed both, he opposes an  
20 assumption without an assignment. And he opposes,  
21 perhaps even more so, the continued operation  
22 without an assumption and without a cure of the  
23 prepetition, as well as the postpetition defaults.

24 These are matters, particularly and  
25 arguments with respect and to an extent, if any,

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2 to which Burger Boys informs my decision to which  
3 parties are entitled to appropriate notice,  
4 opportunity to be heard, and if they chose to, to  
5 submit briefs.

6 Likewise, the U.S. Trustee has  
7 indicated, at the least, that she reserves her  
8 rights to be heard with respect to whether a  
9 responsible officer or agent of the type discussed  
10 by the Debtor is appropriate. These are matters  
11 that I am going to give you guys a fair chance to  
12 be heard on.

13 Now, I would like to hear from you,  
14 Mr. Backenroth, as to how quickly you would have  
15 the set of papers where you want to embody  
16 whatever you are asking for. And, then, I want to  
17 hear from Mr. Campo and Ms. Davis and anybody else  
18 who wants to be heard on it, what they consider to  
19 be a fair time to respond.

20 I will waive replies if there is  
21 consensus that it's in the interest of reaching a  
22 quick decision, to decide it faster, but I am not  
23 going to decide anything without giving the  
24 landlord and the U.S. Trustee a fair opportunity  
25 to be heard.

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2 Mr. Backenroth, the first half of my  
3 question. When would you have papers for whatever  
4 you are asking for ready to go?

5 MR. BACKENROTH: Down tomorrow.

6 THE COURT: Down tomorrow.

7 Mr. Campo, Ms. Davis, assuming that  
8 you got papers tomorrow, how much time would you  
9 want to respond, balancing your needs to have a  
10 chance to respond with your desire, if I assume it  
11 is correct, to be heard quickly on this subject?

12 MS. DAVIS: Can I have a moment with  
13 Mr. Campo?

14 THE COURT: Certainly.

15 MR. CAMPO: May I add there is  
16 another issue before I respond?

17 THE COURT: Yes, you may.

18 MR. CAMPO: It is only because this  
19 other matter has some impact on how promptly we  
20 would be prepared to go forward. There are two  
21 issues, one is the continuing accrual of  
22 postpetition administrative --

23 THE COURT: I am having trouble  
24 hearing you.

25 MR. CAMPO: I said there are two



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2 issues, one is the continuing accrual of  
3 postpetition administrative rent. I hear Your  
4 Honor, and I understand that you would be prepared  
5 to give us a prompt hearing, and I appreciate  
6 that.

7 The second matter, Your Honor, deals  
8 with the motion that was brought on by an Order to  
9 Show Cause, versus now being converted to an  
10 adversary proceeding, which on Friday of last  
11 week, counsel, not Mr. Backenroth, but Mr.  
12 Frankel, advised my partner, Mr. Safer, that the  
13 Debtor was no longer going to oppose, namely, the  
14 Order to Show Cause or now the adversary  
15 proceeding for the injunction to cease the  
16 operations of The Tunnel.

17 I would like to hear Mr. Backenroth  
18 confirm what Mr. Frankel told us. And, if there  
19 are not going to be any operations of The Tunnel  
20 over this weekend, then what I would propose is  
21 give us until Friday to respond and have a hearing  
22 on Monday.

23 Your Honor, also, by the way,  
24 tomorrow is the trial in that matter. Your Honor  
25 set a schedule for the parties to exchange witness

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2 lists, to also exchange documents, and it was in  
3 the context of the exchanging of that information  
4 that Mr. Frankel told Mr. Safer, we are not  
5 opposing your motion any longer. We know we can't  
6 continue to operate. And that was the first time  
7 he had given us some inkling that they were going  
8 to look for a responsible officer.

9 Now, I would like to hear Mr.  
10 Frankel, I am sorry, Mr. Backenroth tell us why  
11 they are telling us they can't operate. They are  
12 telling us they need a responsible officer, but  
13 yet they will try to continue operations --

14 MR. BACKENROTH: I think what Mr.  
15 Frankel told them, I was not a party of the  
16 conversation, but what was reported back to me was  
17 that we would not operate without the insurance  
18 required under the lease. And that was the basis  
19 of their motion. And we have no intention of  
20 operating without that. In fact, the Order to  
21 Show Cause will require the responsible party to  
22 have the appropriate insurance in place as  
23 required under the lease in order to operate.

24 So, that, I think, is the request of  
25 the injunctive relief. He just stops the

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2 conversation at the point where you want to stop  
3 operating. I don't think the commitment was made  
4 to stop operating. It was a commitment made that  
5 we won't operate without the appropriate  
6 insurance, which we have no intention of doing and  
7 which we stand by that commitment.

8 And, in fact, the Order to Show Cause  
9 required the new person to do that, to have  
10 appropriate insurance.

11 MR. CAMPO: But, again, I will just  
12 ask Mr. Backenroth, what I think I am hearing is  
13 that the current management is not going to  
14 operate, so, therefore, until there is a hearing  
15 on this responsible officer motion, and Your Honor  
16 makes a determination as to whether or not the  
17 Debtor can move forward with this, there couldn't  
18 be any operations because they have admitted they  
19 don't have the insurance under the lease. That is  
20 what I want on the record and I want a  
21 representation from the Debtor that there is not  
22 going to be any operation.

23 MR. BACKENROTH: I make the  
24 representation that if there is no insurance as  
25 required under the lease, that is 1 million, 3

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2 million, with no exclusion for assault and  
3 battery, there will be no operations. But I am  
4 not making the representation that if we have the  
5 appropriate insurance, that we can't operate.

6 THE COURT: You said 1 million, 3  
7 million. My understanding is, although we did not  
8 finally get to a ruling on it, because I believe  
9 it became moot, that the better view was it was 3  
10 million, wasn't it?

11 MR. BACKENROTH: No, I am not  
12 arguing. In other words, it's 1 million and 3  
13 million in total. We are not arguing with that.  
14 I am not arguing that clause of the lease. I am  
15 accepting the landlord's interpretation, let me  
16 put it that way, of the lease, which I understand  
17 is 1 million per occurrence and 3 million in  
18 total. And there is no exclusion for assault and  
19 battery.

20 THE COURT: Are you telling -- there  
21 are too many plays on words here and double  
22 entendres. I want this to be kind of confirmed in  
23 baby talk.

24 Are you representing to me, Mr.  
25 Backenroth, that if you -- that before you have

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2 operations this coming weekend, you are going to  
3 have all of the insurance that is required under  
4 Mr. Campo's contention as to what is required?

5 MR. BACKENROTH: That is correct.

6 And that is why I believe what was conveyed to Mr.  
7 Campo.

8 THE COURT: All right.

9 MR. BACKENROTH: If we don't have it,  
10 we won't have operations.

11 MR. CAMPO: The problem with that is  
12 that there is not going to be a mechanism for us  
13 to review. And if there is a dispute as to  
14 whether that insurance is there, and indeed in  
15 place, for Your Honor to determine whether or  
16 not --

17 THE COURT: Well, I suppose we can  
18 create a mechanism. I think where you guys know I  
19 have been coming from since the beginning of this  
20 case is that I am not of a mind to rewrite  
21 contracts. And I am of a mind to go by what the  
22 Code requires.

23 Now, with those two things being the  
24 ground rules, number one is that Mr. Campo, you  
25 get, in essence, what you have been asking for, at

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2 least for this weekend, which is protection  
3 against the risk that there are operations at the  
4 club for which your client is hanging out there,  
5 because there is not insurance.

6 If it isn't clear from the questions  
7 I have asked, I do have the view, subject to an  
8 opportunity to be heard, to brief the issue and to  
9 orally argue it, that there are severely or  
10 seriously litigable issues as to whether the  
11 responsible officer concept has sufficient basis  
12 in the Code for me to approve it and assuming that  
13 it can be, whether litigable issues under  
14 365(d)(4) exists with respect to whether I should,  
15 in essence, assume the time, excuse me, extend the  
16 time to assume or reject when the landlord is  
17 being protected only for postpetition rent and not  
18 prepetition rent.

19 I am not going to judge those issues  
20 today, except acknowledge that they are serious  
21 issues.

22 With all of that said, my original  
23 question hasn't been answered and I would like you  
24 guys to get back to it and respond to that.  
25 Balancing what is, obviously, a landlord need to

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2 get this buttoned up as quickly as possible with  
3 the desire, as I sensed, to write a brief and/or  
4 responding papers, that allow you to tell your  
5 side of the story, what do you want in terms of a  
6 briefing schedule and a hearing, which I will do  
7 my darneest to give you on an expedited basis if  
8 everybody wants it?

9 (Off the record.)

10 THE COURT: Wait a second, Ms. Davis,  
11 you're back and she is back, but I want to give  
12 Mr. Campo a chance to hear what you have to say.

13 Ladies and gentlemen, I want to  
14 balance having you have the ability to confer with  
15 maintaining an orderly courtroom and keeping  
16 things moving forward here.

17 Okay, Ms. Davis.

18 MS. DAVIS: Yes, Your Honor, assuming  
19 the Debtor files its pleadings tomorrow, we would  
20 like three-business days. I think that would be  
21 Friday morning, with a hearing on Monday, if that  
22 would be the Court's schedule.

23 THE COURT: Mr. Campo?

24 MR. CAMPO: Your Honor, that is an  
25 acceptable schedule. Can I ask Mr. Backenroth two

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2 questions?

3 First off, the time --

4 THE COURT: First, I would like you  
5 to speak in the mike, and second --

6 MR. CAMPO: Thank you.

7 THE COURT: Because we don't engage  
8 in parliamentary debate here, why don't you raise  
9 with me the questions you would like to have  
10 answered, and if I regard it as appropriate, I  
11 will put them to Mr. Backenroth?

12 MR. CAMPO: Thank you, Your Honor.  
13 Number one, I would like to know the timing for  
14 tomorrow, what time we would see these papers.

15 Number two, we heard about this on  
16 Friday. We were told the reason that they were  
17 delaying moving forward was because there was no  
18 real commitment, and that there wasn't any  
19 \$200,000 on the deposit. I would like to know  
20 whether or not this responsible officer has  
21 deposited the \$200,000 with Mr. Backenroth's firm.

22 And then the third thing I would like  
23 to ask, Your Honor, is I would like Mr. Backenroth  
24 to identify who those responsible officers are  
25 now, and I would like a concession from them that



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2 we could have discovery of the responsible officer  
3 now, not have to wait until they file their formal  
4 Order to Show Cause and we file our response.

5 THE COURT: All right.

6 All of those questions are  
7 appropriate. Do you remember them all, Mr.  
8 Backenroth?

9 MR. BACKENROTH: Well, I would ask  
10 for a hearing on Tuesday, only so that we would  
11 have twenty-four hours to respond to papers that I  
12 assume that they would file --

13 THE COURT: I think the question Mr.  
14 Campo was asking was not when I would set the  
15 hearing, after all the papers were in, but when  
16 would you have your papers to him tomorrow?

17 MR. BACKENROTH: By the end of the  
18 business today.

19 THE COURT: All right, we will just  
20 define that as 5:00 tomorrow.

21 MR. BACKENROTH: Yes.

22 With regard to some of the other  
23 items, the responsible party would be Mr. Aviel  
24 Marrache. He would deposit with my firm, before I  
25 file any papers, \$200,000. That is the amount of

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2 money necessary to cure the defaults under the --  
3 to the landlord for postpetition rent.

4 If that money is not deposited, I  
5 will not file the papers. I would simply inform  
6 the Court that the money is not there, and that  
7 Your Honor can reject the lease at that point,  
8 because I am not interested in horsing anybody  
9 around. But I am interested to the extent that  
10 there are monies to be gotten, that we can get it  
11 for creditors, Your Honor.

12 THE COURT: Okay, Ms. Davis?

13 MS. DAVIS: A spelling of Mr.  
14 Marrache's name.

15 MR. BACKENROTH: M-a-r-a-c-h-e.

16 THE COURT: Mr. Campo also had a  
17 request that it be made available for discovery.  
18 It seems to me that that is, I will give you a  
19 chance to be heard.

20 MR. BACKENROTH: When does he want to  
21 do it?

22 THE COURT: Okay, let me just do it  
23 this way, I am authorizing and directing expedited  
24 discovery if Mr. Campo chooses to avail himself of  
25 it, at a time mutually agreed to within reason as

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2 between the two of you, plus Ms. Davis, if she  
3 wants to listen in or otherwise participate, and  
4 that is a right, but not an obligation on her  
5 part.

6 And although I said, listen in or  
7 otherwise participate, needless to say what I mean  
8 is as a full participant with all rights in that  
9 regard.

10 If you can't schedule it without my  
11 help, call my chambers up and I will do what I  
12 need to do.

13 MS. DAVIS: Your Honor?

14 THE COURT: Yes, Ms. Davis.

15 MS. DAVIS: I am sorry to interrupt.  
16 You requested some preliminary disclosures in the  
17 application. For instance, generally where a  
18 party will be, quote unquote, retained although  
19 this is not a formal retention under 327, we would  
20 like there to be some representation as to whether  
21 or not he is disinterested, has some adverse  
22 interest. We think that should be a part of the  
23 application, and that information should not be  
24 required to be obtained for discovery --

25 MR. BACKENROTH: I will put that in

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2 the application.

3 THE COURT: Absolutely, that is a  
4 very reasonable request on her part.

5 Okay, we will have a hearing, but on  
6 Tuesday, not on Monday, and the reason for that is  
7 not because you asked for it candidly, Mr.  
8 Backenroth, but because I have a full day of  
9 hearings on PSI Net, a \$3.7 billion case and those  
10 needs need to be taken care of, too.

11 Papers to be submitted by Mr.  
12 Backenroth's side by 5:00 tomorrow. Service by  
13 fax is authorized, as long as it's followed up by  
14 hand within a short time thereafter.

15 If they are so voluminous, that  
16 faxing isn't practical, just serve them by hand.  
17 But I will expect that Mr. Campo will have the  
18 papers in hand by some means by 5:00 tomorrow.  
19 And responsive papers by 5:00 on Friday, for  
20 either or both the U.S. Trustee and Mr. Campo,  
21 assuming either of you wants to be heard.

22 You may but need not respond with  
23 reply papers on Monday, Mr. Backenroth, but  
24 remember that if they are going to do any good,  
25 you have to give them to me early enough so that I

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2 can read them.

3 MR. BACKENROTH: I understand.

4 THE COURT: And, this is all without  
5 prejudice to any rights either of you have for  
6 cross motions, such as 365(d)(4), extensions or  
7 related motions, I should say, or motions with  
8 respect to that.

9 When does your 120 days run, Mr.  
10 Backenroth?

11 MR. BACKENROTH: I was about to raise  
12 that, the 60 days.

13 THE COURT: Excuse me, Your Honor.

14 MR. BACKENROTH: Yes, that goes for  
15 either Thursday or Friday, so I would ask that  
16 Your Honor extend the period to assume or reject  
17 to the Tuesday return date.

18 THE COURT: You will have a Bridge  
19 Order until that Tuesday, but it should be  
20 understood that the Bridge Order will change  
21 neither the burden of proof or persuasion with  
22 respect to the extension of the 365(d)(4) periods,  
23 all of which shall remain with the Debtor.

24 MR. BACKENROTH: I understand, Your  
25 Honor.

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2 THE COURT: And, why don't we just  
3 assume, your papers should deal with the 365(d)(4)  
4 issues when you serve them tomorrow, Mr.  
5 Backenroth? And we are going to put that on for a  
6 hearing on Tuesday as well.

7 MR. BACKENROTH: Okay.

8 THE COURT: Am I correct, that with  
9 the representation you have made, Mr. Backenroth,  
10 that you are not going to operate the club without  
11 insurance this weekend, and when I say without  
12 insurance," I mean the insurance the way Mr. Campo  
13 says it should be, that we have nothing left for  
14 tomorrow and that it's all going to be a week from  
15 tomorrow?

16 MR. BACKENROTH: That is correct,  
17 Your Honor.

18 THE COURT: Mr. Campo, are you cool  
19 with that as well?

20 MR. CAMPO: Your Honor, I am fine,  
21 except how do we know? I mean, I am not certain,  
22 but I thought Mr. Backenroth said that it's the  
23 responsible officer who would be getting the  
24 insurance for the responsible person.

25 So do I understand the Debtor is not

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT  
2 going to get that insurance before they operate  
3 this weekend --

4 MR. BACKENROTH: No, no, when the  
5 responsible party, hopefully, gets put in, then he  
6 has to have the appropriate insurance as we  
7 discussed.

8 MR. CAMPO: Well then, Your Honor is  
9 not -- I am sorry, I didn't mean to cut him off.

10 THE COURT: Wait, please don't cut  
11 him off.

12 MR. BACKENROTH: The Debtor, since  
13 the hearing will be on Tuesday, there will be no  
14 responsible party on Friday or Thursday or any  
15 other date before the one date that they open up  
16 this club. So the Debtor is still there and has  
17 to have the appropriate insurance if it's to be  
18 opened, and I think it is Saturday that they have  
19 the premises open. And if we don't, we will have  
20 the premises closed.

21 THE COURT: All right.

22 MR. CAMPO: So we just need -- Your  
23 Honor, if I may, we need some mechanism to review  
24 whatever insurance the Debtor is going to provide  
25 to us. I would like to know when they will give

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2 it to us. So if we need to come down to Your  
3 Honor on that issue, we will know it.

4 MR. BACKENROTH: We will get it to  
5 you by Thursday, is that all right?

6 MR. CAMPO: That just does not leave  
7 the Court enough time to hear --

8 THE COURT: I will deal with it on  
9 Friday. I am used to doing this kind of stuff,  
10 all right. But there will either be insurance of  
11 the type that Mr. Campo said, or the club will be  
12 dark on Saturday night.

13 MR. BACKENROTH: That is correct.  
14 That is the understanding.

15 THE COURT: That is my ruling. I  
16 assume there is no misunderstanding on that issue.

17 MR. BACKENROTH: Mr. Gatin is in the  
18 courtroom, and he hears Your Honor as well.

19 MR. CAMPO: Your Honor?

20 THE COURT: Yes, Mr. Campo.

21 MR. CAMPO: Two things. First with  
22 respect to Mr. Backenroth's statement earlier that  
23 if there is no deposit, no \$200,000 deposit by  
24 tomorrow, they won't submit the papers. I assume  
25 that Mr. Backenroth's papers will reflect that



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2 they have received the \$200,000. If they don't,  
3 then he is not going to file them. And we need a  
4 mechanism to have a lease rejected.

5 THE COURT: I could not hear you.

6 MR. CAMPO: We would then need a  
7 mechanism to have the release rejected because Mr.  
8 Backenroth says if they don't get the deposit,  
9 they are not proceeding with the Order to Show  
10 Cause and, therefore, he is conceding that he  
11 didn't have the lease back and at least if he  
12 didn't, they would be rejected --

13 MR. BACKENROTH: I am stating on the  
14 record that if I do not get the \$200,000, tomorrow  
15 I will not submit the papers and I will consent to  
16 the reject of the lease and that is the end of it.

17 THE COURT: Okay, I will take a lease  
18 rejection Order, if it has Mr. Backenroth's and  
19 Ms. Davis' no objection on it without further  
20 notice. I don't think there is any other party  
21 that has appeared in this case that would have a  
22 problem with that.

23 Mr. Mann, if you want to be a  
24 signatory on that, as well, you are the only other  
25 person who has really appeared in this matter?

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2 MR. MANN: I would.

3 THE COURT: Then, get a no object  
4 from Mr. Mann as well before you submit it.

5 MR. CAMPO: That is fine, Your Honor.

6 With respect to -- can I just ask if  
7 you could ask Mr. Backenroth, he identified it as  
8 Mr. Marrache, M-a-r-a-c-h-e, or --

9 A VOICE: Two R's.

10 MR. BACKENROTH: M-a-r-r-a-c-h-e.

11 MR. CAMPO: The papers would explain  
12 Mr. Marrache's background.

13 THE COURT: I think that was a  
14 request Ms. Davis made. I think I already ruled  
15 that request was granted.

16 THE COURT: Okay, we are starting to  
17 get repetitive here. Is there anything else?

18 MR. BACKENROTH: Could I dispense  
19 with an Order to Show Cause and perhaps make it as  
20 a notice of motion so I could save the --

21 THE COURT: Yes, notice it up for a  
22 return hearing on Tuesday.

23 MR. CAMPO: What time?

24 MR. BACKENROTH: What time?

25 MS. BLUM: 9:45.

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2 MR. CAMPO: I know you suggested  
3 before that Mr. Backenroth, if he was going to  
4 reply, he had to do it early. Could we have a  
5 time for Monday, so we can see his papers?

6 THE COURT: Mr. Backenroth, do you  
7 want to be heard on that?

8 MR. BACKENROTH: Could have to the  
9 afternoon? I know Your Honor is a quick read, and  
10 Your Honor probably knows the issues --

11 THE COURT: 5:00 P.M.

12 MR. BACKENROTH: Okay.

13 THE COURT: All right, anything else  
14 on this?

15 (No response.)

16 THE COURT: Now, I have been making  
17 the Attorney General's Office cool their heels. I  
18 think that deals with all matters with respect to  
19 The Tunnel.

20 MR. CAMPO: Actually, it doesn't.

21 THE COURT: Yes, sir.

22 MR. CAMPO: We do have a motion on  
23 today to schedule a 2004 examination of Mr. Gatin,  
24 which Mr. Frankel advised our office on Friday  
25 that he didn't have any objection to. He just

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT  
2 wanted to have some opportunity to work out a  
3 reasonable schedule for the production of the  
4 documents at the hearing.

5 THE COURT: Mr. Backenroth?

6 MR. BACKENROTH: I think that we went  
7 through discovery with the production of  
8 documents, but I will work out -- I mean, if they  
9 want, we will put all the documents in a room, and  
10 let them go through it, if that is what they want  
11 to do.

12 THE COURT: All right, to the extent  
13 it has not already been done, I am authorizing  
14 both document discovery and deposition discovery  
15 of Mr. Gatin under Rule 2004.

16 I hope and expect that you all can  
17 agree among yourselves as to the production of  
18 documents, and a satisfactory date for the  
19 deposition. And if you have a problem, come back  
20 to me, but I am going to remind you all of the  
21 duty to confer in good faith before you bring  
22 matters of that character to me.

23 MR. CAMPO: We will, Your Honor.

24 If I may, just to respond very  
25 briefly to Mr. Backenroth, the 2004 that we had

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT  
2 was not of Mr. Gatin. It was of Ms. Gatin. It  
3 was very limited. It was limited to the  
4 postpetition operations. And it was limited  
5 solely to the issue of the Debtors' ability to pay  
6 postpetition rent. We are talking about a  
7 full-fledged 2004 examination.

8 THE COURT: So we are or we are not?

9 MR. CAMPO: We are. We have noticed  
10 a full 2004 with a full 2004 document demand, so  
11 we are not expecting to have the same documents  
12 reproduced. We want the prepetition documents.  
13 We also now want to examine Mr. Gatin, as we are  
14 entitled to, on all issues relevant to the  
15 financial affairs of the Debtor. And Your Honor,  
16 quite frankly a lot of this stems from what we  
17 were told by Ms. Gatin after we had her  
18 preliminary 2004.

19 MR. BACKENROTH: They asked for,  
20 basically, all the documents of the Debtor. The  
21 only way to deal with all of that is to put it all  
22 in a room, let them go through whatever they wish  
23 to go through. If they want to pinpoint things,  
24 we will try to pull it out for them, but theirs is  
25 as broad and wide as the Mississippi River, their

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT

2 request and we will try and comply with it.

3 THE COURT: All right.

4 MR. BACKENROTH: Could I ask that  
5 Your Honor order on the record the extension of  
6 the time to assume or reject, since we are not  
7 actually submitting an Order to Show Cause?

8 THE COURT: Under 365(d)(4)?

9 MR. BACKENROTH: Yes, sir.

10 THE COURT: The record is so ordered.

11 However, I will confirm, once again, what I just  
12 said, that the extension that I am granting today  
13 under 365(d)(4) is a Bridge Order, which shall  
14 neither change the burden of proof or persuasion  
15 on the underlying determination as to whether the  
16 time to assume or reject under 365(d)(4) is  
17 extended, all of which shall remain on the Debtor.  
18 So we are going to review it on a clean slate  
19 Tuesday, a week from tomorrow.

20 MR. BACKENROTH: That is fine, Your  
21 Honor.

22 Your Honor, with regard to the  
23 Limelight, I believe that we have a concession  
24 from the landlord that we will agree to the  
25 assumption, to the extension of time to assume or

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT

2 reject up to the date of closing.

3 THE COURT: Is that correct, Mr.

4 Lichtenberg?

5 MR. LICHTENBERG: That is correct,

6 Your Honor.

7 MR. BACKENROTH: I don't have to  
8 submit an Order on them?

9 THE COURT: No, you don't.

10 MR. CAMPO: I just have two other  
11 matters. They are minor, and I apologize.

12 The Debtor hasn't filed its  
13 schedules. I believe there was a representation  
14 last week that they would be filed and then there  
15 was a 341(a) meeting, which was one conducted by  
16 Mr. Zipes, who is not here today.

17 Also the Debtors' first operating  
18 statements are due on Wednesday. Can we get a  
19 representation from the Debtor that we will get  
20 both the schedules and the operating statements on  
21 Wednesday?

22 THE COURT: Mr. Backenroth?

23 MR. BACKENROTH: I hope, I told him  
24 we would get it this week, so I hope to get it to  
25 him this week. That is what we said at the 341(a)

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT

2 meeting, and we stand by that.

3 THE COURT: All right, get them to me  
4 this week, not to me, but to the clerk's office  
5 and any party who wants to see them, and, needless  
6 to say, the U.S. Trustee for the operating report.  
7 and, if you have not complied with that, that will  
8 be one thing that I will be looking for you to  
9 explain next Tuesday.

10 MR. BACKENROTH: I understand that.

11 MS. DAVIS: Unfortunately, we need a  
12 more exact date than next week. We need a  
13 specific time and date, because I think that might  
14 go to certain cross motions that might be filed  
15 before Friday. So if we can have a time, we would  
16 appreciate that, Your Honor?

17 MR. BACKENROTH: As a said, I will  
18 get it to her before the end of the week, Friday  
19 morning. I don't know what else. I don't want to  
20 commit to a date and then we don't --

21 THE COURT: All right, if the U.S.  
22 Trustee's office does not have it by 10:00 on  
23 Friday, it is authorized to file any motions it  
24 regards as appropriate.

25 MS. DAVIS: Thank you, Your Honor.



1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT

2 THE COURT: Okay, all right, I want  
3 to hear the SLA motion. Anybody who is here for  
4 other matters is free to leave. You don't have to  
5 leave, but if you are going to leave, I want you  
6 to leave quickly and quietly, please.

7 MR. MANN: Good afternoon, Your  
8 Honor.

9 THE COURT: Just give me a second to  
10 have the courtroom shake itself out. Thank you.

11 MR. MANN: Good afternoon, Your  
12 Honor, the request of the Attorney General, SLA is  
13 fairly simple. There had been administrative  
14 proceedings that had been going on for quite some  
15 time starting back in 1996. And, the SLA was at  
16 the point of completing those administrative  
17 hearings when the Debtors, both of them, filed for  
18 bankruptcy.

19 We have a belief that these  
20 administrative hearings should be completed and  
21 that if there is a revocation Order, it should  
22 issued.

23 We believe that the proceedings were  
24 the valid exercise of the mandatory powers of the  
25 State and that Section 362(d)(4) specifically

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT  
2 allows that exact type of hearing to be completed.

3 Case law has made a distinction about  
4 the types of recatory powers that really come  
5 within 362(b)(4), and those that on its face look  
6 like it comes within (b)(4), but actually it does  
7 not, and that is the pecuniary interests test as  
8 opposed to health, safety and welfare test.

9 Cases have held that where the State  
10 really has a pecuniary interest, and that it's  
11 really no more or no better a creditor than anyone  
12 else --

13 THE COURT: Such as if you were  
14 trying to yank the license for nonpayment of a  
15 licensing fee?

16 MR. MANN: Exactly. There are a  
17 variety of types, of reasons why a license could  
18 be yanked, having to do with delinquent taxes,  
19 nonpayment of fees, anything of that nature.

20 This particular hearing,  
21 administrative proceeding, had absolutely nothing  
22 to do with the pecuniary interests test. It was  
23 purely health, safety and welfare.

24 And the cases have held that where  
25 that is the case, where there is no pecuniary

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT  
2 interest involved, then 362(d)(4) should apply,  
3 and that the State should be allowed to complete  
4 its administrative proceedings. And that is what  
5 the State believes is the case today.

6 THE COURT: Let me interrupt you, Mr.  
7 Mann, because I am certainly in accord with you on  
8 the pecuniary interests, but there is -- once you  
9 get into the regulation of the health, safety and  
10 welfare, I am wondering if there is another fork  
11 in the road, and, in particular, if you read Judge  
12 Votolato's lot toes's decision out of Rhode  
13 Island, where he looked to see whether the  
14 particular regulatory interest that the State was  
15 enforcing was one that affected the public health  
16 and safety.

17 He concluded that it wasn't a  
18 pecuniary interest or at least he didn't rule that  
19 way. But he said that when you have a requirement  
20 that says you have to be open X hours, that  
21 doesn't sufficiently go to the public health and  
22 safety, as, for instance, a more serious offense  
23 can. And, he, therefore, engrafted what I thought  
24 was a third inquiry, which was to determine what  
25 the grounds for revocation were, and then looked

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT  
2 to see whether the health and safety was involved.

3 If I were to agree that the two  
4 standards you talked about are appropriate, but I  
5 should also look at a third, whether the  
6 particular offense here is, in essence, stepping  
7 on a regulatory crack on the one hand or really  
8 does involve the public, public health and safety  
9 on the Order, what would you respond to me?

10 MR. MANN: I would say that the  
11 charges that were against the two Debtors in this  
12 case were of sufficient health, safety and welfare  
13 standards to go well beyond the standard of the  
14 Judge when he talked about the hours or  
15 regulation, the hours.

16 These charges are much more serious  
17 than that, Judge, and they go to charges of  
18 widespread drug use in the premises over quite a  
19 long period of time. And the administrative law  
20 Judge goes into that in great detail which, of  
21 course, I have attached to the motion papers.  
22 And, I certainly would posit that widespread drug  
23 use certainly is a lot more serious and would  
24 certainly concern the health and safety of people  
25 of the State of New York more than merely time,

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT

2 how long a premises is open.

3 So, I would say that if you add that  
4 as a third criteria --

5 THE COURT: You are saying you easily  
6 meet that standard?

7 MR. MANN: Easily.

8 THE COURT: Do you want to comment on  
9 the Debtors' contention that there should be a  
10 requirement for "urgently", in essence, written  
11 into the statute?

12 MR. MANN: Judge, I saw that in one  
13 case. That is the only case I found that says  
14 urgent is necessary. Every other case I have seen  
15 just says matters concerning or involving or  
16 affecting health and welfare. There is that one  
17 case that Debtors did find that added an item of  
18 urgency.

19 THE COURT: And your point is that  
20 urgency, the word "urgent" just doesn't appear in  
21 the statute?

22 MR. MANN: That is correct. I have  
23 not seen it anywhere else. And I think that the  
24 standard is still met. Even if we want "urgency,"  
25 and I think there is an argument that could be

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT  
2 made that it is still urgent enough to cause a  
3 possibility of drug use, even though there is an  
4 acknowledgment that it's not what it used to be  
5 when these charges were first brought, I don't  
6 think that anyone would say that any drug use has  
7 been totally eradicated in these premises.

8 THE COURT: I don't think it is  
9 appropriate and I don't know if I have a basis for  
10 actually finding disputed facts here, but should I  
11 regard the state of facts as being that the drug  
12 use situation is better now than it was five years  
13 ago, but it is still a matter of concern to the  
14 Liquor Authority, and if so, do I have a factual  
15 basis for that?

16 MR. MANN: I think I will let the  
17 Debtor speak to that, rather than myself on that.  
18 I think there are issues regarding that. But what  
19 I would state is that the original charges that  
20 were brought, and that was what the charges are  
21 for, and even though there may have been some  
22 correction subsequent to that time, it doesn't  
23 vitiate the original reason the charges were  
24 brought.

25 And that the decision of the ALJ if

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT  
2 allowed to continue, is still subject to review.  
3 I mean if the bankruptcy petition had not been  
4 filed, the Debtor would have had the opportunity,  
5 under an Article 78 proceeding in State Court, to  
6 appeal that.

7 Certainly, we would not have any  
8 objection to that happening, if we were allowed to  
9 proceed to the conclusion of our administrative  
10 proceeding. And obviously, the Debtor would have  
11 his right under Article 78 to raise any issues he  
12 wants in State Court.

13 THE COURT: You are saying in  
14 substance that if the State Liquor Authority has  
15 been unduly punishing the Debtor for past  
16 activities, the State Courts are capable of  
17 dealing with it?

18 MR. MANN: I believe so. I believe  
19 that as part of the overall reviewing of the SLA  
20 decision, that could be raised.

21 THE COURT: I interrupted you. Would  
22 you like to get any further thoughts out  
23 uninterrupted?

24 MR. MANN: Not at this point, Your  
25 Honor. I think I have raised all the issues that

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT

2 I wanted to.

3 THE COURT: Okay, Mr. Backenroth?

4 MR. BACKENROTH: Yes, Your Honor.

5 I think looking at Judge Votolato's  
6 decision, the Rhode Island decision, that it's not  
7 sufficient simply that it's a health, safety and  
8 welfare issue. It has to be an immediate health,  
9 safety and welfare issue, something that is of  
10 immediate concern.

11 Just as another example, the IDH case  
12 or the cases dealing with the zoning situation --

13 THE COURT: Well, as you can guess, I  
14 had -- from my questions to Mr. Mann, I had some  
15 problems with reliance on IDH and I had it for two  
16 reasons. One is that since IDH was decided, which  
17 was about twenty years ago, the Supreme Court in,  
18 I think it's Ron Pair and the Second Circuit, in a  
19 case whose name I had forgotten, but which I cited  
20 in my decision in Krishnaya, have all talked about  
21 that the starting point for an analysis of the  
22 Code is what it says. And there is no requirement  
23 for urgency under 362(b)(4), is there?

24 MR. BACKENROTH: I agree with that,  
25 the word does not appear in the statute. But the



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2 question is, what is the understanding of the word  
3 "police powers"? Does it mean any exercise of any  
4 regulatory police power, does that mean anything?  
5 Would it include zoning type of things? I,  
6 myself, had a case many years ago where the zoning  
7 was changed the day before the hearing on a  
8 sale --

9 THE COURT: Yes, but wasn't the exact  
10 issue in that IDH case whether or not it was a  
11 prior conforming use and whether a tolling under  
12 the Code would blow it. If society determined  
13 that a prior conforming use does not bother them  
14 that much as an exercise of, when exercising a  
15 police power, it is like saying, "Yes, we would  
16 like to kind of do it, but it isn't all that  
17 important to us."

18 MR. BACKENROTH: Well, that is the  
19 question, whether or not, that is really the  
20 analysis of those cases; whether or not when we  
21 say "police powers," there is a certain threshold  
22 of importance, for lack of a better term, that  
23 must be reached in order to --

24 THE COURT: And, the State is talking  
25 about drug dealing here, right?

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2 MR. BACKENROTH: Your Honor, with  
3 regard to that, I am not questioning the fact that  
4 drug dealing is a very serious issue. The two  
5 points that I would like to make as we had made in  
6 our response papers, is, number one, we are  
7 talking about activity that took place before  
8 1995, and that since then, a serious effort has  
9 been made to police the premises.

10 There were independent monitors that  
11 were brought in, a former police chief of the City  
12 of New York. There were a lot of efforts that  
13 were done. And, in fact, in State Court, when  
14 they moved, when the City of New York moved based  
15 upon a nuisance claim, which is a very similar  
16 type of claim as the State Liquor Authority would  
17 consider, whether or not that this kind of  
18 activity is going on over there, the State Court  
19 judge did not terminate the ongoing operations  
20 based on the grounds that the Debtor was doing  
21 everything it possibly could to maintain the  
22 premises drug free --

23 THE COURT: I hear you, but, where,  
24 Mr. Backenroth, if the State could analyze the  
25 issues and get to what you would contend is the

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT  
2 right result in that nuisance case, doesn't that  
3 kind of reinforce Mr. Mann's point that they are  
4 capable of making sure that the SLA has acted  
5 appropriately on any administrative review in the  
6 State Court here as well?

7 MR. BACKENROTH: Obviously, the  
8 question would be that the Debtor has a right to  
9 go for an Article 78 proceeding. The question is  
10 whether or not similar to those type of issues  
11 that would be presented in a State Court Article  
12 78 proceeding, whether or not this Court would  
13 consider those kinds of issues as well as to  
14 whether or not there really is a serious issue  
15 concerning health, safety and welfare; or whether  
16 there is simply a determination by the Board for  
17 reasons that are not of the immediate health,  
18 safety and welfare and whether or not Your Honor  
19 is prepared to put that gloss on the statute, to  
20 determine whether or not the automatic stay  
21 applies.

22 That was the basis of the Rhode  
23 Island decision, just to use an extreme situation,  
24 where the -- where not being open on certain times  
25 was not something that caused a problem for

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT

2 health, safety and welfare. And, therefore, that  
3 kind of regulation could not be that which is  
4 contemplated under the police powers.

5 THE COURT: But suppose you take  
6 those, that fact and you convert not being open at  
7 certain times to a more precise articulation of  
8 what the offense was there? Theirs was that the  
9 bar was not open enough.

10 MR. BACKENROTH: That is correct.

11 THE COURT: Suppose, by way of  
12 example, you had just the flip side of that. The  
13 bar was open after hours. I think the Colonial, I  
14 forget the name of that Massachusetts case, but it  
15 involved keeping it open after midnight. I am not  
16 enough of a drinker to tell you what the closing  
17 hour is in New York, but let us say, 3:00 A.M.  
18 Suppose you had a bar that was staying open after  
19 3. I would think that being open too late is more  
20 of a societal danger than not being open enough.

21 MR. BACKENROTH: No question about  
22 it.

23 THE COURT: And I would think to pick  
24 up on what Mr. Mann told me, if you have drug  
25 dealing on your premises, isn't that even more of

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT

2 a societal concern?

3 MR. BACKENROTH: There is no question  
4 about that. But the point that we would make is  
5 that the basis of the determination was not based  
6 upon current activity, but rather on activity that  
7 took place before 1995.

8 In addition, we presented to the  
9 State Liquor Authority the fact that we are  
10 selling the premises, so, therefore, whatever  
11 concerns that they have are not a concern going  
12 forward.

13 It is not on the issue from 1995 to  
14 the present. It is the point that from the  
15 present going forward, we're selling the premises,  
16 we are going out of there, so, therefore, at this  
17 point, the only party that would be heard would be  
18 the creditors who would get the benefit of a  
19 transfer of the liquor license and the sale.

20 So, there is a second issue to this  
21 thing, not only the question of whether or not  
22 anything was transpiring since 1995, which our  
23 position was that there wasn't -- that basically,  
24 this place was policed as good or better than any  
25 other nightclub around, that they had an enormous

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2 amount of security, and that was the finding of  
3 the State Court judge on the nuisance issue. So  
4 that would be the first prong of our claim.

5 But the second prong is that when you  
6 add onto the fact that we only filed so that we  
7 could sell it and get out of this thing and  
8 generate money for, in essence, the Taxing  
9 Authorities and other people that are owed money,  
10 that when you put that together, there isn't an  
11 ongoing health, safety and welfare issue  
12 sufficient to say that there is a police power  
13 issue.

14 The automatic stay doesn't apply, and  
15 the asset, basically should be terminated, because  
16 once the State Liquor Authority terminates this  
17 liquor license, that is the end of the entire  
18 Debtor operation, or its ability to sell, which I  
19 think is more important in this particular --

20 THE COURT: Do you agree that going  
21 forward, the SLA has pretty much the absolute  
22 right to assure that the ownership and control of  
23 this club is absolutely clean from a drug  
24 perspective?

25 MR. BACKENROTH: Sure, they do. That

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2 is one of the things that they take into  
3 consideration. But I don't think that that is  
4 what they really took into consideration.

5 I think in this particular instance,  
6 they basically reviewed facts that took place  
7 before 1995 as opposed to facts that took place  
8 subsequent to that. I think they disregarded  
9 those subsequent events, and at the end of the  
10 day, they went forward based upon the fact -- as  
11 if the activities that took place before 1995 are  
12 the present activities. Because I think if you  
13 objectively look at these steps that the Debtor  
14 has taken to maintain a drug-free situation at the  
15 premises, that that Debtor has taken all the steps  
16 it would, that one can reasonably expect anybody  
17 to do and even beyond that, to insure that there  
18 isn't drug activity.

19 So I think that the analysis was more  
20 on the pre-period as opposed to the post-period.  
21 I am talking about 1995.

22 THE COURT: Yes, but you said more.  
23 And you didn't say solely. And suppose that, for  
24 the sake of argument, that it's a lot better,  
25 really a lot better, and still a lot better than

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT  
2 it was then, but the fact is, the situation wasn't  
3 so great then, and even with the improvements,  
4 there are still problems because some may argue  
5 you can never do away with drug dealing, or maybe  
6 it is because the efforts, while well intentioned,  
7 have not been fully successful. Isn't the SLA  
8 allowed to pay attention to that?

9 MR. BACKENROTH: I think they are,  
10 but the thing -- the evidence that was presented  
11 to the SLA was that it was at least as good, if  
12 not better than any other nightclub situation;  
13 that there was enormous security over there to  
14 prevent that activity from taking place. The  
15 management, it was very vigorous in making sure  
16 that there was no drug dealer or drug activities  
17 on the premises.

18 So when you talk about that, this  
19 Debtor has done the things that they are supposed  
20 to do. That is why I am saying that I would agree  
21 if they tried, and they did not do it. I would  
22 agree that that would be a problem. I don't think  
23 that that is the case. I think they tried.

24 They have put it into place, monitors  
25 to make sure that there isn't that activity and



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2 they have been very successful. It doesn't mean  
3 that you cannot have an instance where somebody  
4 comes in and pulls something out of his pocket and  
5 sniffs it up his nose, but a dealer, they have  
6 input over there that monitors -- they have  
7 private security, making sure that there are not  
8 dealers over there, there is no drug activity, and  
9 to the extent that there were arrests at the  
10 premises, it was generated by the security people,  
11 themselves, when they saw that kind of activity,  
12 working together with the police, getting that  
13 person removed from the premises.

14 So I don't think it is the case where  
15 he did something, but he didn't quite get there.  
16 I think it is the case where he did what he was  
17 supposed to do, but, nevertheless, the SLA is  
18 still focusing on past history.

19 THE COURT: Yes, but aren't you, in  
20 essence, asking me to review? It may be even a  
21 violation of Rooker-Feldman, to ask me to review  
22 whether the SLA is right or wrong in making points  
23 that should be made to the hearing examiner at the  
24 SLA and/or a State judge reviewing an SLA decision  
25 under Article 78.

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2 In essence, what you're saying is  
3 they really did do a good job and to the extent it  
4 was not wholly successful, you can't blame them  
5 for that. But isn't that the kind of decision --  
6 the SLA is still looking at whether the public  
7 health and safety is involved and it may be that  
8 you are simply wrong on the merits, isn't it?

9 MR. BACKENROTH: Yes, I agree with  
10 that, whether they are wrong on the merits and  
11 whether or not, given the fact that whatever they  
12 perceived to be the ongoing situation is coming to  
13 an end, in any event, because of the sale, that  
14 under those circumstances, adding that additional  
15 layer that the automatic stay would protect --

16 THE COURT: That is your strongest  
17 point, that it's coming to an end, in any event?

18 MR. BACKENROTH: No question. It is  
19 the last issue, which is the issue. While they  
20 argue the other part of it, the fact is --

21 THE COURT: You don't need me to tell  
22 you that you are -- it is coming to an end, in any  
23 event is a lot stronger than trying to justify  
24 what happened --

25 MR. BACKENROTH: No question, and

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT  
2 it's a lot closer to the Rhode Island decision  
3 when you start talking in those terms. In other  
4 words, that there is no ongoing activity, there is  
5 no ongoing health, safety and welfare concern,  
6 and, therefore, the automatic stay should be  
7 opposed.

8 THE COURT: Okay, like I did with Mr.  
9 Mann, I interrupted you a lot. I will give you a  
10 couple of minutes to talk uninterrupted.

11 MR. BACKENROTH: I think we covered  
12 basically the points that are involved. We  
13 briefed it. We basically raised all of these same  
14 issues in our responsive papers.

15 THE COURT: Okay, Mr. Mann, do you  
16 want to reply?

17 MR. MANN: I agree with Mr.  
18 Backenroth that we may be coming to the end. It's  
19 a possibility that depending on what happens next  
20 week, this motion could be mooted if Mr. Campo is  
21 successful in having his lease returned. So that  
22 is a possibility. It certainly is something that  
23 would impact the Court's decision on these  
24 motions. So I can understand --

25 THE COURT: To what extent does it

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2 also affect the Limelight?

3 MR. MANN: Affect the --

4 THE COURT: The Limelight, the other  
5 club.

6 MR. MANN: The Limelight is a little  
7 different situation because of the prospective  
8 purchaser. The effect on the Limelight would be  
9 if the application for a temporary or permanent  
10 liquor license is approved or not.

11 Obviously, if it's not approved, then  
12 my motion should probably be approved immediately.  
13 And if it is approved, it, in essence, would moot  
14 it out. And I believe that if the permanent  
15 license is obtained, then the Debtor would  
16 probably voluntarily surrender the current  
17 Debtor's liquor license. So, in that sense, it  
18 would be mooted out --

19 THE COURT: Okay, all right, this  
20 matter has serious consequences to the Debtor, but  
21 by the same token, there is a very strong societal  
22 interest here. And I am going to need to review  
23 the record, in particular, to focus on the extent  
24 to which the State Liquor Authority is focusing on  
25 the more recent past, and going forward.

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2 With all of that said, I am likely to  
3 write on the subject, and I will get you my  
4 opinion on it as soon as practical.

5 I would ask that if it becomes moot  
6 in any regard, you let me know, so that I can deal  
7 with only those portions that need to be dealt  
8 with, if any. The matter will be taken under  
9 submission.

10 Mr. Rosenbloom?

11 MR. ROSENBLOOM: Yes, if I can just  
12 be heard briefly with respect to the Limelight?  
13 This is something that --

14 THE COURT: Sure, just bring the mike  
15 closer to you, Mr. Rosenbloom.

16 MR. ROSENBLOOM: This is a matter  
17 which is of greater significance to my client,  
18 since, A, we are prepared to close quickly; and,  
19 B, I am told that the process becomes a lot more  
20 cumbersome and a lot more difficult --

21 THE COURT: If the license has been  
22 already forfeited?

23 MR. ROSENBLOOM: Yes, Your Honor.

24 THE COURT: Given what Mr. Mann said,  
25 I have a proposal which I will give each of you a

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2 chance to hear. If so far as it accepts the  
3 Limelight, I will so far as there is an objection,  
4 take it under submission to see whether the  
5 Limelight gets the licenses that it's seeking  
6 before I rule, and if Mr. Mann is of the view that  
7 it then becomes moot, vis-a-vis the Limelight,  
8 then I can decide it only with respect to The  
9 Tunnel. How do you feel about that?

10 MR. VICTOR: I believe there is a  
11 section of the ABC law, I think it is 120,  
12 requiring the State Liquor Authority to act  
13 within, I believe it is 60 days from the date of  
14 filing, which is last week, the formal  
15 application. But, in the past, they have  
16 sometimes taken longer than that.

17 So, if we can talk about a 90-day  
18 framework, perhaps that would be, or give the  
19 State Liquor Authority the time it needs to duly  
20 investigate the application and give any  
21 appropriate members of the community that desires  
22 to come before it, a chance to be heard.

23 THE COURT: Let me give Mr. Mann a  
24 chance to be heard.

25 MR. MANN: Your Honor, I would make

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2 my best efforts as far as the SLA to expedite this  
3 decision-making process. I would strongly oppose  
4 this Court ordering that to happen, though. We  
5 would be getting into subject matter jurisdiction,  
6 sovereign immunity issues, areas I certainly don't  
7 want to go into.

8 THE COURT: You don't need to. I am  
9 aware of them.

10 MR. VICTOR: I was not suggesting  
11 that for the Court.

12 THE COURT: You guys do your thing.  
13 I will do mine. And I am going to make this call  
14 based on what the Bankruptcy Code and case law  
15 tells me to do. The matter is under submission.  
16 We are adjourned.

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C E R T I F I C A T E

STATE OF NEW YORK       )  
                                  ) ss.:  
COUNTY OF NEW YORK     )

I, SYLANDIA BROCK, a Shorthand  
Reporter and Notary Public within and for  
the State of New York, do hereby certify:

I reported the proceedings in the  
within-entitled matter, and that the within  
transcript is a true record of such  
proceedings.

I further certify that I am not  
related, by blood or marriage, to any of  
the parties in this matter and that I am  
in no way interested in the outcome of this  
matter.

IN WITNESS WHEREOF, I have hereunto  
set my hand this 15 day of August,  
2001.

  
\_\_\_\_\_  
SYLANDIA BROCK